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Province and the States

A HISTORY OF THE PROVINCE OF LOUISIANA UNDER FRANCE AND SPAIN, AND OF THE TERRITORIES AND STATES OF THE UNITED STATES FORMED THEREFROM

IN SEVEN VOLUMES

ILLUSTRATED WITH NUMEROUS MAPS AND PORTRAITS

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MADISON, WIS.
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The Province and the States

CHAPTER I

The Navigation of the Mississippi River, 1763-1783

THE settled policy of jealousy and hostility between France and Great Britain had more to do with the fate of Louisiana prior to the acquisition of that province by the United States than any other cause. This hostility was first seriously revealed in America when the formation of the Ohio Company in England and the Atlantic colonies on or about the year 1749 and the grant to them of about six hundred thousand acres in the rich valley of the Ohio, "The Beautiful River," threatened the western extension of the English American colonies into the valuable territory claimed by the government of France. By treaty, England secured from the powerful Iroquois domination over all their lands to the westward; and as they claimed to the Mississippi, particularly in the Ohio valley, England likewise claimed a westward extension to that river. The English under the youthful George Washington took possession of the present site of Pittsburg; but were soon driven away by the French who made preparations to resist any advancement of the British to the westward of the Alleghany mountains. About this time Benjamin Franklin conceived the plan of the federation of all the Atlantic colonies for their mutual protection and as a safeguard against French hostility; but the plan was rejected

by the English ministry on the ground that it would render the colonies too strong for their probable subjection to the mother country."* Early in 1755 war between France and England seemed inevitable. To avoid the conflict, the French cabinet proposed the reciprocal evacuation of all the country between the river Ohio and the Alleghany mountains; but the English government refused to consider this proposition for a moment. They claimed the whole country westward to the Wabash river at least and demanded the destruction of all the French settlements in the territory thus claimed. They further demanded the neutrality of the great lakes, the demolition of all the French forts at Niagara and Lake Champlain, and the acknowledgment of British rights both to the northward and westward. These demands were deemed so extravagant by France that they were positively refused, although it was easily perceived that England desired war in order to secure Canada and although the French government, owing to the profligacy of the reign of Louis XV, desired peace "at almost any price."†

The occupation of the Mississippi valley by the English was proposed to Queen Anne, and might have been accomplished as the result of the second inter-colonial war; but apparently England at that time did not press her advantages in the direction of securing the country to the west. The assembly of New York had addressed the queen on the subject of the importance of the Mississippi valley, but their address was apparently unheeded. William Penn recommended that the colonial line should be extended to the St. Lawrence on the north and beyond the Mississippi on the west. But other considerations seem to have influenced the English monarchs. At the conclusion of the treaty of Utrecht, all of the great west was left to France. The settlement on the Illinois and the Mississippi might have been broken up by England as one of the legitimate results of this war, wherein that country seemed all powerful despite the destruction of the fleet of Admiral Walker. The treaty left the vital inter-colonial questions unsettled. The domains of the Iroquois, claimed by the English, were declared to extend westward to the Mississippi and northward to the Ottawa river. But the French settlements of the Mississippi valley were too strong an argument for the English statesmen to overcome. France retained both banks of the Mississippi.

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* Secret Journals of Foreign Affairs, Congress.

† History of France: Michelet.

Hostilities were formally initiated by the dispatch of General Braddock and his forces to America in January, 1755. The designs of France had been to confine the English colonies to the territory eastward of the Alleghanies by a semi-circle of forts extending from the mouth of the river St. Lawrence westward through Canada, thence across the great lakes and on through the Ohio and the Mississippi valleys down to New Orleans. But the English were far from admitting the French exclusive claims to the valley of the Ohio as far westward at least as the Wabash and to the great lakes, and made preparations on a large scale to attack the French at four quarters along the northern and western borders. Thus was begun the "Seven Years War," which ended with the treaty of Fontainebleau in 1762-3. The success of the English in securing far more than they had demanded, was due to that remarkable man, William Pitt. When the terms of the treaty were being debated by the British parliament, he declared they were far too lenient; and although sick at the time was carried to the chamber, where, for three hours, he fought the treaty measures and declared that now was the time to despoil France of every colony she possessed.*

However, before the conclusion of peace, the famous "Family Compact" was signed at Paris on the 15th of August, 1761. This was a close and strict alliance between the governments of France and Spain, by which it was agreed that any Power that became the enemy of one should also be the enemy of the other; that each should guarantee the possessions of the other to be sustained by the combined forces of the two countries; that, as a first assistance, the one of the two powers from which it was demanded should in three months place twelve ships and six frigates at the disposal of the other, besides twenty-four thousand troops if France should desire them and twelve thousand if Spain should desire them; that the operations of the war should be conducted by both in common or conjunction; that any peace secured should be only in common; that, in other words, they should be allies in peace as well as in war; that at the conclusion of peace, when negotiations for mutual settlement were inaugurated, the advantages secured by one should be balanced against the losses of the other; that the two monarchies should act in peace and war as a unit or one power; and that there should be a complete confidence between them as to all alliances and negotiations.† To this "Family Compact" was appended a

* Parliamentary Debates.

† Narrative and Critical History of America: Winsor.

separate agreement to the effect that Spain should declare war against Great Britain May 1, 1762, unless peace should have been concluded prior to that date. As compensation for this action, Spain was promised in any event to receive Minorca when peace should be concluded. France and Spain, thus united, used every possible inducement for Portugal to join the alliance, even to the extent of threatened war and invasion, but to no avail. The compact and the special agreement were both kept secret, though England learned much of their import soon afterward.

In reality Spain entered the war late in 1761. She had scarcely done so ere England began on every ocean and sea to prey upon her rich galleons and to fling powerful forces against her valuable colonial possessions. In the summer of 1762, Havana was captured, by which Spain lost fifty million dollars' worth of property, besides nine ships of the line. Panama, St. Domingo, Florida and Louisiana were all seriously threatened, and doubtless would have fallen to the possession of England had the war continued.* Spain had entered the war too late to be of any material assistance to France, but just in season to suffer almost irreparable losses herself. The preliminaries of peace were concluded in September, 1762, but had been delayed for two months or more by the obstinacy of the Marquis de Grimaldi. Had he not opposed some of the peace measures at such an expense of time, the loss of Cuba would have been avoided. In that event France would not have been required under the mandates of the "Family Compact" to cede Louisiana to Spain; because, inasmuch as Louisiana was ceded to Spain to compensate her for the loss of Cuba, the necessity of such cession would not have arisen, had the Marquis de Grimaldi not delayed the treaty until Havana had fallen before the guns of the English. Thus the fate of Louisiana might have been altogether different had it not been for the obstinacy of the Marquis. However, as "one man's loss is another man's gain," the United States later profited immensely by the stubbornness of the Spaniard. It should likewise be borne in mind that if France had not previously made the Wabash, Illinois and Wisconsin valleys a dependency of Canada, the chances are that she would not have been required to cede that territory to the English.† The latter conquered Canada during the war, and had therefore the right to demand all the dependencies of the province. But had those dependencies been a part of Louisiana, they could not

* History of England: Adolphus.

† History of Canada: Smith.

have made such a demand, and such territory would undoubtedly have remained in the possession of the French or been ceded by her to the Spanish. That eventuality also might have seriously affected the transfer of Louisiana to the United States. Of such small circumstances is the complex fabric of civilization woven.

The Seven Years war crushed and humiliated France to an extraordinary degree. Her magnificent colonial domains in America were torn from her grasp. England had acquired all the country to the eastward of the Mississippi, a splendid conquest upon which could be built a beautiful and powerful principality for the English crown.* The historian Martin says of the results of the war, "A French colony, full of promise, unscathed by the sword of the enemy, the last relic of our continental empire in America, was ceded like a flock of sheep. When this unhappy agreement was made public, the cabinet of Versailles strove to appease public opinion, deeply irritated, by insinuating in its semi-official justifications, that Louisiana was threatened with the same fate as Canada and that it was abandoned only because it would have been impossible long to keep it. The Louisianians did not learn until the expiration of eighteen months, of the treaty that denationalized them. Their governor, M. d'Abbadie, died of sorrow. The grief was universal." But the dismay of France was occasioned by the strength and growth of Great Britain, her ancient and implacable enemy. Another such a war and France and Spain, it was seen, would become dependencies of the British crown. If the will of Mr. Pitt had prevailed in the English parliament when the terms of peace were discussed, both France and Spain would have suffered far more than they did. It was a lesson which the French people and the French ministry never forgot, and resulted in the reorganization of every department of the government.

The preliminary convention of peace was held at Fontainebleau on the 3d of November, 1762, on which occasion the Duke de Choiseul on the part of France and the Marquis de Grimaldi on the part of Spain, concluded the treaty by which Louisiana as far east as the Iberville (Manshac) was ceded by France to Spain.† In a preliminary treaty on the same day France and Spain ceded all the territory possessed by them east of the Mississippi and of the Iberville to Great Britain. This left the island of New Orleans and the town of New Orleans attached to

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* The Fall of New France: Hart.

† Senate Documents, 2d Session, 23d Congress.

the territory west of the Mississippi. The cession of Louisiana above mentioned by France to Spain was conditioned upon the ratifications of the French and the Spanish sovereigns and was kept secret. While Great Britain and other nations *may* have been apprised of its nature, it was not printed in the United States until 1834, when it was obtained from the archives of France by members of congress to be used in settling controversies over Florida lands in the courts of the United States. However, it had been printed in England long before that date and a few copies had found their way to America. This treaty was ratified by the King of Spain at San Lorenzo el Real November 13, 1762, and by the King of France at Versailles November 23, 1762. The definitive treaty was signed by the ministers plenipotentiary of the two governments February 10, 1763. It should be noted that the preliminary treaty between Great Britain on one side and France and Spain on the other and the secret preliminary treaty between France and Spain were both signed at Fontainebleau on November 3, 1762. Previous to this time Louisiana had been considered to embrace territory on both sides of the Mississippi; but after this date the term "Louisiana" referred only to the country west of that river though it embraced the Island of New Orleans on the east side of the main channel. As both of the preliminary treaties above mentioned were signed at the same city and on the same day it is clear that, after it had been determined to cede all the country east of the Mississippi to Great Britain, Spain was compensated for her secrifices with the cession to her by France of the country west of the Mississippi, or with Louisiana proper, as it was afterward known.

Prior to these treaties, Louisiana in the possession of France extended to the Perdido on the Gulf, and stretching northward along the left bank of the Mississippi embraced a wide tract of country to the eastward of that stream known as "the Illinois Country" and finally joined Canada in the expanse of territory covered by the great lakes. The eastern boundary of Louisiana in the hands of France, except as to the Perdido on the Gulf, was undetermined. France claimed eastward on the upper Mississipoi to the Alleghany mountains, but the British colonies claimed the Ohio valley and generally an extension westward to the Wabash or in some instances to the Mississippi. As a dispute afterward arose over what was meant by the term "Louisiana," it should be borne in mind that the Louisiana which Spain received at the treaty of 1762, was not the Louisiana which France possessed prior to that treaty, and that this double mean-

ing or application of the term occasioned much of the subsequent dissension. The Louisiana received by Spain was bounded eastward by the Mississippi, the Iberville and the lakes Maurepas and Pontchartrain. The Louisiana possessed by France prior to 1762, was bounded on the Gulf to the eastward by the Perdido, but farther northward the boundary was undetermined, though in the "Illinois Country" it stretched far enough eastward to join Canada, to which it was attached or appended. As a result of the Seven Years War Spain lost the country known as Florida, that is all east of the Perdido, to England, and also lost Minorca which has been promised her by France, it having been captured by the British navy.

The following paragraphs are extracts from the treaties of 1762 and 1763:*

"The Most Christian King (of France), being firmly resolved to strengthen and perpetuate the bonds of tender amity which unite him to his cousin, the Catholic King (of Spain), proposes in consequence to act with his Catholic Majesty at all times and in all circumstances in a perfect uniformity of principles for the common glory of their house and the reciprocal interests of their kingdoms.

"With this view, his Most Christian Majesty, being fully sensible of the sacrifices made by the Catholic King, in generously uniting with him for the restoration of peace, desires on this occasion to give him a proof of the strong interest which he takes in satisfying him and affording advantages to his crown.

"The Most Christian King has accordingly authorized his minister, the Duke de Choiseul, to deliver to the Marquis de Grimaldi, the ambassador of the Catholic King, in the most authentic form, an act, whereby his Most Christian Majesty cedes in entire possession, purely and simply, without exception, to his Catholic Majesty and his successors, in perpetuity, all the country known under the name of Louisiana, as well as New Orleans and the island in which that place stands."

The language used "all the country known under the name of Louisiana" meant all of the province except what on the same day was ceded by France to Great Britain. It could have meant nothing else, because it was the understanding of the three powers at the time that England should get all the territory east of the Mississippi except the island of New Orleans, and because England proceeded to take possession of that part of Louisiana which

* Senate Documents, 2d Session, 23d Congress.

was bounded on the west by the Mississippi and the Iberville. Spain under the secret treaty took all of the remainder of Louisiana which extended eastward to the Mississippi and the Iberville (Manshac).

"Whereas, on the third day of the present month (November 3, 1762) the preliminaries of a peace were signed between the crowns of Spain and France on the one part and those of England and Portugal on the other, and the Most Christian King, my very dear and well-beloved cousin, purely from the nobleness of his heart and the love and friendship in which we live, thought proper to dispose that the Marquis de Grimaldi, my ambassador extraordinary near his royal person, and the Duke De Choiseul, his minister of state, should on the same day sign a convention by which the crown of France ceded immediately to that of Spain the country known by the name of Louisiana, together with New Orleans and the island in which that city stands, and by which my said ambassador agrees to the cession only conditionally *sub spe rati*, as he is not furnished with orders to execute it absolutely:

"Therefore, in order to establish between the Spanish and French nations the same spirit of union and friendship which should subsist as they do in the hearts of their sovereigns, I, therefore, take pleasure in accepting, as I do accept in proper form, the said act of cession, promising also to accept those which may hereafter be judged necessary for carrying it into entire and formal execution and authorizing the said Marquis de Grimaldi to treat, conclude and sign them. Given at San Lorenzo el Real on the thirteenth of November, 1762."

"THE KING."*

"The said acceptation and ratification having been approved by us, and regarded as a strong evidence of the friendship and good will of our very dear and well-beloved cousin, the Catholic King, we renew and confirm by these presents the cession of Louisiana and of New Orleans, with the island in which that city stands, promising immediately to conclude with our said brother and cousin a convention in which the measures to be taken in concert for executing and consummating this cession to our mutual satisfaction will be fixed by common accord. Given at Versailles on the twenty-third day of the month of November, 1762."

"LOUIS."

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*Annual Register (English): Vol. VI.

"Sir: "Versailles, April 21, 1764."

The King has caused the necessary orders to be issued for the surrender of the country of Louisiana, with New Orleans and the island in which that city stands, into the hands of the commissioner whom his Catholic Majesty may appoint to receive them. I have sent the same papers to the Marquis de Ossum, who will have the honor to present them to his Catholic Majesty. Your Excellency will see that the King's orders are entirely conformable with the acts signed in 1762, and that his Majesty has caused some articles to be inserted, equally conducive to the tranquillity of the country after it is in the possession of his Catholic Majesty, and to the happiness of its inhabitants. I have the honor to be, with great esteem, your Excellency's most humble and obedient servant." "THE DUKE DE CHOISEUL."

"TO THE CONDE DE FUENTES."

The following articles from those treaties explain themselves:

"Article VII. In order to reestablish peace on solid and durable foundations, and to remove forever all subjects of dispute with regards to the limits of the British and French territories on the continent of America, that for the future the confines between the dominions of his Britannic Majesty, in that part of the world, shall be fixed irrevocably by a line drawn along the middle of the river Mississippi, from its source to the river Iberville, and from thence by a line drawn along the middle of this river, and the lake Maurepas and Pontchartrain to the sea; and for this purpose the most Christian King cedes, in full right, and guarantees to his Britannic Majesty, the river and port of Mobile, and everything which he possesses, or ought to possess on the left side the river Mississippi, except the town of New Orleans and the island in which it is situated, which shall remain to France; provided that the river Mississippi shall be equally free as well to the subjects of Great Britain as to those of France in its whole breadth and length, from its source to the sea, and expressly that part which is between the said island of New Orleans and the right bank of that river, as well as the passage both in and out of its mouth. It is further stipulated that the vessels belonging to the subjects of either nation shall not be stopped, visited, or subjected to the payment of any duty whatsoever. The stipulations inserted in the IVth article in favor of the inhabitants of Canada, shall also take place with regard to the inhabitants of the countries ceded by this article."*

* Annual Register (English). Vol. VI.

The stipulations referred to in the last sentence of this article extended to the inhabitants of the territory ceded the right to profess and exercise the Catholic religion and to remove from the territory with their effects should they so desire.

"Article XX. In consequence of the restitution stipulated in the preceding article (Article XIX concerning Havana, etc.), his Catholic Majesty cedes and guarantees, in full right, to his Britannic Majesty, Florida, with Fort St. Augustine and the Bay of Pensacola, as well as all that Spain possesses on the continent of North America, to the east, or to the southeast of the river Mississippi; and in general everything that depends on the said countries and lands, with the sovereignty, property, possession and all right acquired by treaties or otherwise, which the Catholic King and the crown of Spain have had till now over the said countries, lands, places and other inhabitants; so that the Catholic King cedes and makes over the whole to the said King and to the crown of Great Britain, and that in the most ample manner and form."

"Article XXII. All the papers, letters, documents and archives which were found in the countries, territories, towns, and places that are restored, and those belonging to the countries ceded, shall be respectively and bona fide delivered or furnished at the same time, if possible, that possession is taken, or at latest four months after the exchange of the ratifications of the present treaty in whatever places the said papers or documents may be found."

"Article XXIII. All the countries and territories which may have been conquered in whatsoever part of the world by the arms of their Britannic and Most Faithful (Portugal) Majesties, as well as by those of their Most Christian (France) and Most Catholic (Spain) Majesties, which are not included in the present treaty, either under the title of cessions, or under the title of restitutions, shall be restored without difficulty and without requiring any compensation."

"Article XXIV. . . . It is agreed that the British and French troops shall complete before the 15th of March next, all that shall remain to be executed of the 12th and 13th articles of the preliminaries, signed the 3d day of November last (1762), with regard to the evacuation to be made in the empire or elsewhere. . . . Great Britain shall likewise, at the end of three months after the exchange of the ratifications of the present treaty, or sooner if it can be done, enter into the possession of the river and port of the Mobile, and of all that is to form the limits of the territory of Great Britain on the side of the river Mississippi as they are specified in the seventh article. . . . The fort-

ress of the Havana with all that has been conquered in the island of Cuba shall be restored three months after the exchange of the ratifications of the present treaty, or sooner if it can be done; and at the same time Great Britain shall enter into possession of the country ceded by Spain according to the twentieth article."*

From Article VII above, it will be seen that France ceded the river and port of Mobile to Great Britain, and therefore must have possessed them prior to the cession. This cession confirms the prior ownership by France of the country eastward to the Perdido. From article XX above, it will be seen that Spain ceded to Great Britain the Bay of Pensacola and the country eastward to St. Augustine. This cession still further confirms the fact that the territory of Spain extended no farther westward than the Perdido, and that the French Louisiana did extend eastward to the Perdido. As Spain had engaged in the war merely to assist France, and as in so doing had lost Florida, France compensated her with what may be called "the Spanish Louisiana."

This treaty fixed the western limits of the Atlantic colonies in the middle of the Mississipi the Iberville and the lakes Maurepas and Pontchartrain. This was the first time the Mississippi was made the boundary between the possessions of any two or more nations. It was likewise the date when the province of Louisiana as possessed by France was divided, all that portion eastward of the Mississippi and the Iberville never afterward receiving the appellation of "Louisiana." The English maps from this time forward show the Atlantic colonies extended westward to the Mississippi. England secured all the country to the east of the Mississippi except the island of New Orleans. Particular attention is called to the cession of the right to the free navigation of the Mississippi from its source to the sea, particularly to that portion between the right bank of the river and the Island of New Orleans. As will be seen, the right to this navigation was ceded absolutely and without reservation from the source of the river to the Gulf of Mexico. Within a short time after this cession, Great Britain divided Florida into the two sections—East and West—the latter being bounded on the west by lakes Pantchartrain and Maurepas, the river Iberville and the river Mississippi as far north as the thirty-first degree of north latitude. Thus it was that England created West Florida and extended it to the Mississippi. In the organization of the territory thus secured by conquest, Great Britain purposely omitted the upper Mississippi country, in order

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*Annual Register (English): Vol. VI.

not to give offense to the Indians there, who, no doubt, would object to have their lands parceled out, subdivided and governed without their consent and without payment therefor.

"The reader will observe, and possibly with some surprise,* that in this distribution much the largest and perhaps the most valuable part of our conquests does not fall into any of these governments: that the environs of the great lakes, the fine countries on the whole course of the Ohio and Ouabache (Wabash), and almost all that tract of Louisiana which lies in the hither branch of the Mississippi, are none of them comprehended in the distribution. The government of West Florida extends in no part much above half a degree from the sea. Many reasons may be assigned for this apparent omission. A consideration of the Indians was, we presume, the principal, because it might have given a sensible alarm to that people if they had seen us formally cantoning out their whole country into regular establishments."

In his proclamation of October 7, 1763, King George of England spoke of the western boundary of West Florida, "to the westward by lake Pontchartrain, the lake Maurepas and the river Mississippi."† The treaty of 1763 attached definitely the island and town of New Orleans to the country west of the Mississippi, and in all subsequent designation that assignment and boundary were followed. The line was referred to at first as "the river Iberville, the lakes Maurepas and Pontchartrain," and spoken of as "one of the mouths of the Mississippi." Later it was psoken of as "the bayou Manshac and the lakes Maurepas and Pontchartrain." In early times, no doubt, a much greater volume of water found its way through this outlet from the Mississippi to the Gulf than in later times; and hence the Island of New Orleans was usually spoken of as part of the country west of the Mississippi.

No other changes were made until the conclusion of the Revolutionary war; but as the right to navigate the Mississippi river became one of the most serious questions of contention during the progress of the war and as such contention shaped to a considerable extent the attitude of Spain and France, and perhaps England, toward the United States and promised to affect the welfare and destiny of Louisiana, the subject will be followed closely in these pages.

The English board of trade, by recommendation dated March

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* Annual Register (English): Vol. VI.

† Annual Register (English): Vol. VI.

23d, 1764, asked for a provision altering the boundary of West Florida on the north from the thirty-first degree to the mouth of the Yazoo river. The reason given for the recommendation was the fact that a strong settlement had been made on the east side of the Mississippi above the thirty first degree, and the fact that the bay and town of Mobile were presumed to be above that parallel. In accordance with this recommendation, the English government under date of June 6, 1764, extended the northern boundary of West Florida up the Mississippi to the mouth of the Yazoo river, thence eastward to the Apalachicola river. This line was still the boundary in 1770, as shown by the following mandate:*

"George the Third, by the Grace of God, of Great Britain, France and Ireland King, defender of the faith and so forth, to our trusty and well beloved Peter Chester, esquire, greeting:

"We, reposing especial trust and confidence in the prudence, courage and loyalty of you, the said Peter Chester, of our especial grace, certain knowledge and mere motion, have thought fit to constitute and appoint you the said Peter Chester to be our captain general and governor in chief in and over our province of West Florida in America bounded to the southward by the Gulf of Mexico, including all the islands within six leagues of the coast, from the Apalachicola river to lake Pontchartrain; to the westward by the said lake and the Lake Maurepas and the river Mississippi; to the northward by a line drawn from the mouth of the river Yasous where it unites with the Mississippi due east to the river Apalachicola; and to the eastward by the said river."

Witness ourself at Westminster the 25th day of January, and the tenth year of our reign (1770)."

"THE KING."

The loss to France in 1763 of Canada, Louisiana and all of the Mississippi valley rendered possible the condition by which the colonies were enabled to free themselves from Great Britain. Had France retained possession, the colonies would certainly not have secured the Mississippi valley, and would probably not have secured their independence, even with their western boundaries in the Alleghany mountains. They would not have had the assistance of France in their struggle. Her enormous losses in 1763, kindled the resentment of France against Great Britain, from which the colonies were benefited. The Bourbon family compact

* Annual Register (English): Vol. VI.

and a unity of interests made Spain the ally of France. Even before the commencement of the Revolution, France had begun to advise and assist the colonies, and even to intimate to them, if not plainly to promise, that she would sustain their revolt against the mother country. But at this time the Mississippi country was not taken into consideration except remotely, and the fear of Spain of future danger from the English colonies was not yet kindled. Every process that weakened England strengthened France as well as Spain. The fate of Louisiana depended upon the course pursued by France as well as upon that pursued by Spain.

By the act of the continental congress, approved December 30, 1776, the following proposition was made through the French ambassador to the court of Spain: "That if His Catholic Majesty will join with the United States in war against Great Britain, they will assist in reducing to the possession of Spain the town and harbor of Pensacola; provided that the citizens and inhabitants of the United States shall have the free and uninterrupted navigation of the Mississippi and use of the harbor of Pensacola; and will, provided it be true that His Portuguese Majesty has insultingly expelled the vessels of these States from his ports, or hath confiscated any such vessels, declare war against the said King, if that measure will be agreeable to, and supported by, the courts of France and Spain."* This act was one of the clauses in the letter of instructions sent to the American commissioners in Europe, in which a treaty was drawn up to be submitted to Spain similar to the one prepared for submission to France. The latter had been previously prepared September 17, 1776, in which was the following clause: "Should Spain be disinclined to our cause from any apprehension of danger to his dominions in South America you are empowered to give the strongest assurances that that crown will receive no molestation from the United States in the possession of these territories." These were the instructions given to the minister to France before a special envoy was sent to the court of Spain. From the above it will be observed that thus early in its career the government of the United States clung to the right of the navigation of the Mississippi and hence to the extension to the states westward to that river.

At the commencement of the revolution Spain saw that it was to her interest as a guard against the encroachments of the inhabitants of the colonies on her Louisiana possessions to encourage

* Diplomatic Correspondence: Secret Journals of Foreign Affairs, Congress.

the disaffection of the colonies with the mother country; accordingly she gave her moral support to the revolt, as well as one million francs to be handed to the American commissioners. Later, when it became clear that the issue was independence and wide claims of territory, she regretted her previous course, but was prevented from taking extreme action in favor of Great Britain by the promises and entreaty of France and by the expectation of gaining the Floridas. From possible future entanglements and dangers with the colonies she sought first to free herself by mediation with England. Late in 1778, Count de Florida Blanca proposed to Lord Grantham, the British prime minister, the following terms of a settlement with the colonies:*

"1. The absolute independence of the colonies.

"2. The preservation of Canada and Acadia by England.

"3. The cession of all of Florida to the colonies except what is necessary for the protection of Spanish commerce in the Gulf of Mexico."

But this proposition, made before Spain had begun to fear the colonies, came to naught. In October, 1778, the Count de Vergennes, in speaking of the free navigation of the Mississippi, maintained there would be no difficulty over that queston when terms of peace were discussed, and observed that he would be astonished if Spain made any opposition to it. But it is clear that at this time Spain had already conceived her plan for the rehabilitation of her decaying monarchy by the conquest of the Gulf and the possible establishment of a trans-Atlantic throne at New Orleans or Mexico.

As early as 1777, it became the settled conviction of the nations of Europe that the independence of the British American colonies meant their eventual absorption of the valley of the Mississippi.§ In 1778 it was impressed upon France that without the help of the Spanish navy success on the ocean against Great Britain was a question of grave doubt. Therefore, France, for her own protection, endeavored to allay the misgivings of Spain as to future dissensions with the United States and to secure her active assistance against Great Britain and hence resulted the secret treaty of 1779 between France and Spain, rendered possible only by the "Family Compact."† As the war progressed the United States were given to understand by France that they could not make the

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* Diplomatic Affairs, secret.

§ Dispatch of Luzerne to Vergennes.

† Debrett's Collection of Treaties.

surrender of the Mississippi by Spain one of the conditions of peace; but at the conclusion she endeavored to satisfy Spain with the conditions, though the latter was made to suffer thereby. As a matter of fact, much was left to the drift of events, the only stipulation back of all negotiations being the independence of the colonies, to which finality Spain was never reconciled.

On the 3d of June, 1776, Arthur Lee wrote to the committee of Secret Correspondence of Congress, "The desire of the Court of France to assist may be depended on; but they are yet timid and the ministry unsettled. . . . Spain is more reserved, her minister here an old woman, but assuredly when France moves Spain will co-operate." At this time Spain and Portugal were on the brink of war, the former being supported by France and the latter by England. In order to gain the assistanace of Spain, Beaumarchais, in September, 1776, advised the United States to declare war against Portugal as well as against Great Britain. Soon after an official copy of the Declaration of Independence was received by Silas Deane, the American ambassador to France, he prepared a plan to be used as a basis for an active alliance between the United States and France and Spain. This plan embraced the following points:

The independence of the United States should be recognized by France and Spain, and the young republic should be guaranteed "the possession of all that part of the continent of North America which by the last treaty of peace was ceded and confirmed to the Crown of Great Britain (the treaty of 1763); the United States should guarantee to France and Spain "all and singular their possessions and claims in every other part of America, whether north or south of the equator, and of the islands possessed by them in the American seas; should France or Spain, during the progress of the war, secure possession of the British islands in the West Indies, the United States should agree to assist in confirming such possession; the three nations should sustain one another's rights to free commerce in the cod fishery on the banks of Newfoundland, Cape Breton, etc.; any British ship found on the coasts of North or South America should "forever hereafter" be considered as a lawful prize in peace or in war and no British ship should ever be admitted into the ports of either of the three countries during the present war; France and Spain should send fleets to the American coasts to defend and protect the commerce of the United States and the United States, in return, should defend the French and Spanish possessions in America; "no peace or accommodation should be made with Great

Britain to the infringement or violation of any one of these articles."*

This plan was presented by Mr. Deane to the Count de Vergennes, in his private capacity, as early as November 23, 1776; but seems to have been thought too severe, as nothing further was heard of the plan. When the Declaration of Independence was made public in Paris, it created unbounded joy among the violent enemies of Great Britain. The arrival of "Doctor" Franklin also occasioned the most pleasurable anticipations, because it was seen that his coming meant the rejection by the United States of the overtures of Great Britain. In London the publication of the Declaration caused corresponding depression; it meant the end of peace negotiations and war to the finish. Everything American at Paris was prized and admired. Mr. Deane wrote on December 3 1776, "I must mention some trifles. The queen is fond of parade, and I believe wishes a war, and is our friend. She loves riding on horseback. Could you send me a Narrowhegansett horse or two? The present might be money exceedingly well laid out. Rittenhouse's orrery, or Arnold's collection of insects, a phaeton of American make and a pair of bay horses, a few barrels of apples, of walnuts, of butternuts, etc., would be great curiosities here, where everything American is gazed at, and where the American contest engages the attention of all ages, ranks and sexes."

In a letter of January 4, 1777, Doctor Franklin wrote to congress that the plan of the treaty with France had been laid before the Count de Vergennes and that "by his advice we have had an interview with the Spanish ambassador, Count de Aranda, who seems well disposed towards us, and will forward copies of our memorials to his court, which will act, he says, in perfect concert with this." The American agents made a powerful appeal for assistance and for an alliance with both France and Spain. Doctor Franklin wrote on January 17, "We are promised an answer from this court as soon as they can know the determination of Spain, with which they mean to act in perfect unanimity." On February 2, the three American commissioners, Messrs. Franklin, Deane and Lee, gave their personal pledge to the court of France and Spain "that the United States shall not separately conclude a peace, nor aid Great Britain against France or Spain, nor intermit their best exertions against Great Britain during the continuance of such war; provided always that France and Spain

* Diplomatic Correspondence, secret.

do on their part enter into a similar stipulation with our States." Early in February, the commissioners agreed among themselves that it would be better for them to separate and reside in three different countries, whereupon Mr. Lee started for Madrid and later Mr. Deane for The Hague, while Mr. Franklin remained in Paris. Mr. Lee was stopped by Spain, for prudential reasons, before he reached Madrid. That court did not deem it advisable at that juncture to receive a minister from the United States, or in a public capacity any other representative.

In March, 1777, the commissioners were instructed by congress "that in case France and Spain will enter into the war, the United States will assist the former in the conquest of the British sugar islands and the latter in the conquest of Portugal, promising the assistance of six frigates, manned, of not less than twenty-four guns each, and provisions equal to two million dollars, America desiring for her share only what Britain holds on the Continent." Of this order, Franklin said, "It is a pleasure to find the things ordered which we were doing without orders." Franklin suggested to Lee that, "It would be well to sound the court of Spain on the subject of permitting our armed ships to bring prizes into her ports and there dispose of them." Under date of April 7, Doctor Franklin submitted to the Count de Aranda, Spanish ambassador to France, the proposition contained in the resolution of congress of December 30, 1776. (See supra.)

It is no doubt true that Mr. Deane while at Paris reflected the sense and temper of the United States. Accordingly, when he prepared his draft for the proposed treaty, he incorporated therein the wishes of the United States that their territory, at the conclusion of peace, should extend westward to the Mississippi and the Iberville, or in his own words should embrace "the possession of all that part of the continent of North America which by the last treaty of peace was ceded and confirmed to the Crown of Great Britain." This meant all of the country eastward of the Mississippi and the Iberville including the two Floridas. Neither France nor Spain at the time offered any objection to the territory thus asked for by the American envoy. Neither did they on the other hand state that the territory asked for would be conceded by them. Mr. Deane's plan was abandoned because the conditons were not yet ripe for its adoption. But there is no question that the plan was the foundation of deep thought on the subject of the claims which were sure to spring from the independence of the colonies. It apprised both France and Spain of the territory wanted by the United States. But the statesmen of Spain soon realized that it

would not be impracticable, while the colonies were in sore straits, to secure the Floridas, one of which Spain had previously possessed and both of which she again earnestly desired to gain, principally in order to strengthen her commerce on the Gulf. Inasmuch as she could not expect to gain them through the independence of the colonies, she assumed an attitude of austerity and chilliness toward the United States, with an intimation that the latter were claiming too much territory.

Under date of May 1, 1777, Doctor Franklin wrote, "The people of this country (France) are almost unanimously in our favor. The government has its reasons for postponing the war, but is making daily the most diligent preparations wherein Spain goes hand in hand." And on May 25 he wrote, "The interest of France and Spain, in securing our friendship and commerce, seems daily more and more generally understood here, and we have no doubt of finally obtaining the establishment of that commerce with all the formalities necessary."* 1949952.

But in spite of the efforts of the commissioners considerable time passed without the conclusion of a treaty with either France or Spain. Mr. Lee wrote from Paris on December 8, 1777, "Our joint dispatches will inform you of the forwardness in which things are here towards the desired conclusion. In three weeks we shall hear from Spain, and all will, I hope, be settled. The late intelligence from America has staggered and confounded our enemies as much as it has elated and decided our friends." On December 18 the commissioners wrote, "the great news of Burgoyne's defeat and surrender apparently occasioned as much general joy in France as if it had been a victory of their own troops over their own enemies, such is the universal, warm and sincere good will and attachment to us and our cause in this nation." This news gave the commissioners an excellent opportunity to push their cause. The commissioners wrote, "M. Gerard, one of the secretaries, came yesterday to inform us, by order of the King, that after long and full consideration of our affairs and propositions in council it was decided, and his Majesty was determined, to acknowledge our independence and make a treaty with us of amity and commerce; that in this treaty no advantage would be taken of our present situation to obtain terms from us which otherwise would not be convenient for us to agree to; . . . that his Majesty was fixed in his determination not only to acknowledge, but to support our independence by every means in

* Diplomatic Correspondence, secret.

his power; . . . that the only condition he should require and rely on would be this: That we in no peace to be made with England should give up our independence and return to the obedience of that government; that as soon as the courier returned from Spain with the concurrences expected the affair would be proceeded in and concluded; that of this we might give the congress the strongest assurances in our dispatches, only cautioning them to keep the whole for the present a dead secret, as Spain had three reasons for not immediately declaring: Her money fleet not yet come home, her Brazil army and fleet the same, and her peace with Portugal nor yet quite completed; but these obstacles would probably soon be removed." Finally the commissioners wrote, on February 8, 1778, "We have now the great satisfaction of acquainting you and the congress that the treaties with France are at length completed and signed." And in referring to Spain they said, "Spain being slow, there is a separate and secret clause, by which she is to be received into the alliance upon requisition, and there is no doubt of the event.* When we mention the good will of this nation to our cause we may add that of all Europe, which having been offended by the pride and insolence of Britain, wishes to see its power diminished; and all who have received injuries from her are by one of the articles to be invited into our alliance. The preparations for war are carried on with immense activity and it is soon expected."

In the treaty of alliance between France and the thirteen colonies called the United States, concluded February 6, 1778, the following article was adopted:†

"Article VIII. Neither of the two parties shall conclude either truce or peace with Great Britain without the formal consent of the other first obtained; and they mutually engage not to lay down their arms until the independence of the United States shall have been formally or tacitly assured by the treaty or treaties that shall terminate the war."

On the same date, a separate and secret article between France and the United States reserved to the King of Spain the right to accede to the treaty and to participate in its stipulations whenever he should so desire, the language used being as follows:

"The Most Christian King (of France) declares, in consequence of the intimate union which subsists between him and the King of Spain, that in concluding with the United States of America

* Diplomatic Correspondence, secret.

† Treaties of the United States.

this treaty of amity and commerce, and that of eventual and defensive alliance, his Majesty hath intended, and intends, to reserve expressly, as he reserves by this present separate and secret act, to his said Catholic Majesty (the King of Spain) the power of acceding to the said treaties, and to participate in their stipulations at such time as he shall judge proper. It being well understood, nevertheless that if any of the stipulations of the said treaties are not agreeable to the King of Spain, his Catholic Majesty may propose other conditions analagous to the principal aim of the alliance and conformable to the rules of equity, reciprocity and friendship."

It was anticipated by the members of congress that, should the colonies gain their independence, their western bounds would most likely become the Mississippi river, because the dominions of England extended to that stream. It was proper and rational, therefore, for the members of that body to discuss, even to eventualities, the consequences and responsibilities of independence; accordingly the proceedings of congress are filled with references to and actions upon, the questions of navigating the Mississippi, the western and southern boundaries, the possession of the Floridas, etc. Some such reference was made, or action taken, during the years 1777 and 1778, and in 1779, on March 17 and 24, August 5, and September 9.

In a communication dated Paris, February 10, Mr. Lee informed congress of the reasons for the cautious policy of Spain in postponing an alliance with the United States, which reasons were stated to be substantially as above given by Doctor Franklin. He said, "When the treasure at sea arrives I have no doubt of their according to the treaties signed here and joining in the war." He also wrote, "I am given to understand that Spain will wish to have the possession of Pensacola secured to her in the treaty. I shall hope to receive the commands of congress upon that point as soon as possible. Perhaps congress may think that circumstances are materially changed since the passing the resolve on this subject December 30, 1776, and that the Mississippi is likely to be the only permanent boundary between the two people." Everything seemed bright to the commissioners at this time, for on February 28 they wrote, "Our States have now a solid support for their liberty and independence in their alliance with France, which will certainly be followed by that of Spain and the whole house of Bourbon, and probably by that of Holland and the other Powers of Europe, who are interested in the freedom of commerce and in keeping down the power of Britain." Mr. Lee

said on this date, "The chief reason that induced Spain to temporize subsists still, except the war with Portugal, which is happily concluded by her accession to the family compact," but he also reported that three millions of livres, which had been promised by Spain in addition to the sum previously loaned, was not forthcoming and no reason had been assigned for the delay. He also wrote on March 19, "It is altogether uncertain when it will be convenient for Spain to accede to the alliance. . . . The court of Spain will, I apprehend, make some difficulties about settling the dividing line between their possessions and those of the United States. They wish to have the cession of Pensacola."

As a matter of fact it was, no doubt, that at this time the determination of Spain was formed to secure the Mississippi river commerce and to avoid thereby future contentions with the United States growing out of conflicting claims in that quarter. Mr. Lee wrote from Chaillot on March 17 that he "consulted the Spanish ambassador whether it could be determined with any degree of certainty how long it would be before the business I am pledged for with his court would require my presence. His answer was that it was altogether uncertain."

The King of France, on March 28, apointed M. Gerard, secretary of his council of state, minister plenipotentiary to the United States.* In his instructions to M. Gerard, the king stipulated that considerations to be undertaken in favor of Sain would demand all the dexterity of the minister. "He (M. Gerard) knows that that power (Spain) has taken no part in the two treaties, though she has not opposed them, and that up to the present time she has said nothing of the conditions on which she may accede to them in the future. However, we have reason to think that she would desire to acquire the Floridas, a share of the fisheries of the banks of Newfoundland, and Jamaica. . . . The Floridas enter into the plans of conquest of the Americans. It will therefore be necessary to prepare them for the contingency of a surrender of their claims. The King charges M. Gerard with this in a particular manner, and his Majesty leaves entirely to his prudence the means to be employed to attain this object. . . . It is only necessary to remind him that he must carefully avoid speaking in the name of Spain; for his Catholic Majesty has as yet said nothing relative to his intentions and views. Moreover, M. Gerard knows the principal motives that make Spain desire the Floridas. He will give such efficacy to them as is in his

* Diplomatic Correspondence, secret.

power, but if he cannot succeed in securing the whole territory, he will strive at least to obtain Pensacola and such parts of the coasts as are considered to be the most suited to the interests of the court of Madrid. . . . The envoys of congress (in Paris) have proposed to the King to enter into an engagement to favor the conquest by the Americans of Canada, Nova Scotia and the Floridas, and he has reason to think that congress has taken this project to heart. But the King has considered that the possession of those three countries, or at least of Canada, by England, will be an element of disquiet and anxiety to the Americans, which will make them feel the more the need they have of the alliance and the friendship of the King, and which it is not his interest to remove."

From the above it will be seen that neither France nor Spain pretended to have a conclusive claim to the Floridas. M. Gerard was instructed that "if he cannot succeed in securing the whole territory (the Floridas)," he should strive to gain Pensacola at least, etc. The Floridas belonged to Great Britain and the question at once became paramount, to which nation should they pass in case they were wrested from that power? Congress realized their value to the United States and wanted them; Spain for the same reasons in her interests desired them; and France favored the wishes of Spain. Their acquisition was thus an open question to be determined by subsequent negotiations and maneuvers.

It soon became a mystery to Mr. Lee what had caused the changed attitude of the Spanish authorities. The payment of the additional money that had been promised was deferred; the formation of an alliance with the United States on the basis of the French treaty was postponed; and in March 1778, there was clearly perceptible a steady coldness toward the Americans. Unquestionably, the approaching and inevitable contention over the spoils of the war in America was being comprehended and anticipated by the Spanish ministry. Mr. Lee wrote on April 2, "I have never been able to learn to what was owing the sudden change in the favorable disposition of the Spanish court during my absence in Germany." On April 5 he wrote, "Having pressed the matter of supplies with Spain, I received an answer yesterday that endeavors would be used to send you succors through the Havana. The present critical situation of that court renders them averse to being more particular or to have applications made to them, but I think they will not long remain under this embarrassment." Spain had, unquestionably, made her wants in America known to France and the latter expected to secure them if not

otherwise, through M. Gerard, in accordance with the instructions of the French monarch. But all of this was, of course, unknown to the American ministers, whose wishes to secure an alliance with Spain were father to the thought. It is true that Mr. Lee suspected that the Mississippi question had something to do with the Spanish coldness, but of this he had no positive assurance. Upon the reception of the French treaty in America, congress, though ratifying it, expressed a wish to have the eleventh and twelfth articles expunged wholly from the treaty, because of contentions that might arise. This was finally agreed to by France.

Under date of May 18, 1778, Mr. Ralph Izard, who had been appointed United States commissioner to the court of Tuscany, wrote from Paris to Mr. Lee that, "The fifth article of the treaty of alliance (with France) has given me a great deal of uneasiness, as it seems to have been intended to exclude the United States of America from possessing themselves of the two Floridas. The article is as follows: 'If the United States should think fit to attempt the reduction of the British power remaining in *the northern parts of America*, or the islands of Bermudas, those countries or islands, in case of success, shall be confederated with or dependent upon the said United States.' I had the honor of stating my apprehensions to you and the other commissioners at Passay on the 3d instant. Doctor Franklin did not think they were well founded, nor that any such construction could possibly be put upon the article. North America, he said, strictly speaking, comprised all parts of the continent north of the equator, and the Floridas, being in the latitude of thirty degrees north, would be comprehended within the meaning of the words 'northern parts of America.' I thought it would be best to put it out of all doubt, by getting that explanation of the words under the hands of the French ministry, especially as they would at least admit of dispute, and might in future produce disagreeable consequences. Doctor Franklin said that congress had given some instructions respecting the cession of part of Florida to Spain, and objected to making any application on the subject to the French ministry, as it might be taken ill, and added if my apprehensions were ever so just, it was too late for any remedy in France, but that the commissioner for the court of Madrid might guard any bad consequences in the treaty which he had to conclude with that court. The resolution of congress of the 30th of December, 1776, to which Doctor Franklin alluded, extends only to the town and harbor of Pensacola, and circumstances are much changed in Amer-

ica since that resolution was made. It declares 'that if his Catholic Majesty will join with the United States in a war against Great Britain, they will assist in reducing to the possession of Spain the town and harbor of Pensacola.' Had Spain complied with the request, had she stood forth our friend in the day of distress, the offer made by congress might with propriety have been claimed. She did not declare war against Great Britain, and I do not know that she has done anything yet to entitle her to any great share of our gratitude. . . . If the words were meant to exclude the United States from the acquisition of the Floridas, it must have been intended for the benefit of Spain, and therefore the less likely was it to obtain any satisfaction from that quarter. . . . The article expresses the intentions of the framers of it very distinctly: 'If the United States should think fit to attempt the reduction of,' not the northern parts of America but 'the British power remaining in the northern parts of America.' This power, without taking notice of an inconsiderable settlement on the Mosquito coast, or of Hudson Bay, may be said to have extended from the most southern point of Florida to the most northern part of Canada; and I am of opinion that the United States will not be satisfied if any attempts are made to circumscribe their possessions within narrower limits."*

He continued with astonishing insight to penetrate the real intentions of the French ministry, as revealed in the instructions of the king to M. Gerard. He seems to have been the only one to construe properly the article in question and to perceive the designs of France, unless, perhaps, the others, perceiving, thought it wiser rather to take chances of the future as regards territory than run the risk of incurring the suspicion or ill will of that country. He went on to say, "The eighth article of the original treaty approved of by congress in September, 1776, and transmitted by them to the commissioners at this court (Paris), not only confirms me in this opinion, but throws great light upon the intentions of the French ministry. It is as follows: 'The most Christian King shall never invade, nor under any pretense attempt to possess himself of, Labrador, New Britain, Nova Scotia, Acadia, Florida, nor any of the countries, cities, or towns on the continent of North America; nor of any of the islands of Newfoundland, Cape Breton, St. Johns, Anticosti, nor any other island lying near to the said continent in the seas, or in any gulf, bay, or river, it being the true intent and meaning of this treaty that

* Diplomatic Correspondence, secret.

the said United States shall have the sole, exclusive, undivided and perpetual possession of all the countries, cities, and towns on said continent, and of all islands near to it which now are, or lately were, under the jurisdiction of, or subject to, the king or crown of Great Britain, whenever they shall be united or confederated with the said United States.' These words admit of no mistake; no hidden meaning is concealed under them, nor could there be any possibility of contentions respecting the countries therein described had they been inserted in the treaty. With all due deference to Doctor Franklin, I cannot help declaring that I am firmly persuaded that the court of France would not have substituted the eighth article in the place of the above if they had not had some designs contrary to the intentions of congress, so clearly expressed in their ninth article."

He continued with a conclusion which, in the end, proved absolutely correct: "His most Christian Majesty, in the eleventh article of the treaty of alliance, does not guarantee generally to the United States their possessions, and the additions or conquests that their confederation may obtain during the war from any of the dominions now or hereafter possessed by Great Britain in North America, but stipulates that the guaranty shall only be conformable to the fifth and sixth articles. The latter of these contains nothing but a renunciation on the part of France, of the islands of the Bermudas, and of the whole continent of North America. As France does not pretend to any claim upon the Floridas, this renunciation can, in no respect, affect those Provinces. Spain, who was at the peace of 1763 obliged to cede them to Great Britain, may be desirous of resuming them, and the fifth article in the treaty of alliance seems to lay the foundation of such a claim. Should that event ever take place it would prove extremely prejudicial to the interests of the United States in general, but particularly to those of the South. Spain would, by that means, have a direct communication with the Indians on our frontier, and have it in her power to disturb our settlements whenever she pleased. . . . Florida was never of any advantage to Spain when in her possession, nor is it probable it ever would be were it so again but it will be of the greatest importance to the United States, on account of security, which in all negotiations has been thought a sufficient reason for a claim, though no right existed, which is not the case in the present instance. . . . This is a matter of great consequence, but, however just my apprehensions may be on this point also, I fear it is now too late to receive any satisfactory explanation respecting it at this court,

and we must again turn our eyes towards you for relief. If the court of Madrid could be prevailed upon to guarantee the Floridas and these islands also to the United States, you would render an essential service to your country."

It will not answer to dismiss the criticisms of Messrs. Lee and Izard of the treaty with France, with a declaration of the purity and integrity of Doctor Franklin. Any misunderstanding between the American envoys cannot affect the merits or demerits of the treaty stiulpations. The criticisms of Mr. Izard, at least, were remarkably acute and correct and his predictions were substantially fulfilled. It is not improbable, therefore, that the French ministry purposely left an opening, through which the Spanish court might secure an advantage in the Floridas. This is well substantiated by the strong instructions given M. Gerard by the King of France in favor of gaining the Floridas, not for France, but for Spain. France desired the co-operation of Spain in the struggle which the French government and the United States were making against Great Britain, and hence it is not improbable that she intentionally left an opening in the treaty in order to pave the way to satisfy Spain and to secure her active alliance. This conclusion in no wise reflects upon the purity and integrity of Doctor Franklin, because the consideration of securing the alliance with France outweighed all technicalities, and rightly so, in the mind of Doctor Franklin, and he would rather have accepted an imperfect treaty than none at all.

In answer to Mr. Izard's letter Mr. Lee wrote, "The fifth article stood originally thus: 'Si les États-Unis jugent à propos de tenter la conquête de la Canada, de la Nouvelle-Écosse, de Terre-nueve St. Jean, et des Bermudas, ces conquêtes encas de succes appartiendront aux dits États-Unis.' Even this did not appear to me adequate to the intentions of congress; I therefore proposed that it should be so extensive and explicit as was marked out to us in the eighth article of the plan proposed by congress. My colleagues did not agree with me, and I remember perfectly Doctor Franklin's answer was that congress had receded from those claims since by the concessions directed to be made to Spain. I submitted mine to the opinion of my colleagues. I have already asked the commands of congress relative to conceding anything to Spain agreeably to the instructions of the 30th of December, 1776, which you mention, and you may be assured that I will never subscribe the cession of one inch of what congress has claimed in the eighth article of their plan without their express orders. I shall make no observations respecting the degree of

gratitude to which Spain may be entitled, but the leaving of articles so loose as to occasion disputes, or making cessions which may plant a thorn in the side of any of the United States, is not the manner I should choose of showing it. How the fifth article came changed so much from what it was at first I never could learn." It would seem from the above that when the treaty was made, Doctor Franklin was under the impression that congress had receded from the instructions given in the act of congress of December 30, 1776. His course in disregarding the criticism of Mr. Lee of the fifth article of the treaty can be explained upon no other ground, unless upon the one previously given of his willingness to accept an imperfect or objectionable treaty rather than none at all.

On July 22, 1778, Doctor Franklin wrote, "The Spanish galleons, which have been impatiently expected, are at length happily arrived. The fleet and army returning from Brazil is still out, but supposed to be on her way homeward. When that and the South Sea ships are arrived it will appear whether Spain's accession to the treaty has been delayed for the reasons given, or whether the reasons were only given to excuse the delay."* On August 31, Mr. Lee wrote to the Committee of Foreign Affairs, "It has been hinted to me that there will be two important subjects of negotiation with the Spanish court, upon which I beg to have the orders of congress: Providing the Spanish navy with masts at a stipulated and as reasonable price as possible; and the cession of Florida, should it be conquered, to them. For this they would stipulate, whenever peace is concluded to furnish the funds for redeeming all or a great part of the paper." Mr. Izard wrote on September 12, "The letters which Mr. Lee has lately received from Spain leave not the least room to doubt what the expectations of that court are respecting the Floridas. For my own part, no such additional proof was necessary after having compared the fifth article of the treaty of alliance with the eighth article of the original treaty transmitted by congress. The conduct of Spain has been full of ambiguity. She has been arming with all possible diligence; and at the same time sent an ambassador to London, who has hitherto made use of no other language but that of peace and mediation. . . . Should Spain be suffered to get possession of the Floridas, perpetual causes of quarrel may be expected; and therefore I hope the wisdom of congress will guard against this evil." Mr. Lee wrote to the Committee

* Diplomatic Correspondence, secret.

of Foreign Affairs on October 19, "No movements yet on the part of Spain. I have consulted Count de Vergennes on the propriety of my taking any measures to bring that court to a decision. His advice is in these words, 'My opinion is that you will act prudently to suspend the advances which you desire to make to that court with the view of ascertaining its principles and resolutions with regard to America.'"

For some reason Spain diligently sought to bring the war between Great Britain and the United States to an end. There was a steady communion between the leaders of those two countries during the early stages of the war. It is not at all improbable that Spain may have intimated at one time to the British ministry that the relinquishment of the Floridas to the Spanish government would effect an alliance between Spain and Great Britain. But if so, such an intimation was disregarded by the British, because they did not expect to lose the Floridas even though they lost the colonies.*

In accordance with his instructions, M. Gerard, soon after his arrival in Philadelphia, began to consider the welfare of Spain in all negotiations in which the Floridas or the Mississippi question figured. In the instructions prepared in October, 1778, by order of congress, for Doctor Franklin at Paris, much was omitted that Mr. Morris (who wrote the instructions) had intended should be inserted. It was omitted pursuant to opinions expressed by M. Gerard, who gave congress to understand that France did not care to encourage the conquest of Canada by the United States. He also informed congress that "France would be obliged to discountenance any agressions by the United States upon Spain." Mr. Sparks gave the following summary of a dispatch to M. Gerard to Count de Vergennes October 20, 1778:† "It seemed to him (Gerard) important for the United States to give some surety to that Power (Spain) by fixing certain limits which should not be passed. In answer to Mr. Morris' question as to the nature and extent of this surety, Mr. Gerard said that the renunciation of any design upon Pensacola, Mobile and St. Augustine, and even of the navigation of the Mississippi, would perhaps be necessary to accomplish an object so important to both parties and insure the confidence and friendship of Spain. Mr. Morris replied that many of his colleagues thought it was time to pass a law *de coercendo imperio;* that to extend the terri-

* Narrative and Critical History of America: Winsor.

† Jared Spark's Manuscripts: Harvard College.

tory of the United States farther to the south and west would be rather to weaken than confirm the Union, and that the poverty and vigor of the north were the best safeguards of the Republic. He said these same persons considered it for the interest of the confederation that the navigation of the Mississippi as high up as the mouth of the Ohio should appertain exclusively to his Catholic Majesty, because it would be the only means of retaining under dependence to the Republic the mass of population which would spring up between the Ohio and the lakes and in the western settlements of Virginia; that the inhabitants of these immense regions, whether English or Americans, having an outlet down the St. Lawrence on the one side and the Mississippi on the other, would be in a condition to domineer over the power of the United States, and even of Spain, and would in the end render themselves independent. M. Gerard asked if this was the general sense of congress, for he knew several members who thought the navigation of the Mississippi should belong equally to the English and the Americans. Mr. Morris answered that these topics had not been agitated in such a manner as to come to any positive result, but the prevalent feeling was that it would not be expedient to extend dominion to the south, and he believed the persons who wished to take possession of the Floridas had a scheme of ceding them to Spain for a pecuniary consideration; and that some of those at least who were bent on securing the navigation of the Mississippi were interested in the new establishment in that quarter." But according to Francis Wharton "there must have been a misunderstanding as to the last point on the part of Gerard. Whatever may have been Morris' own conviction of the impolicy of a southwestern extension of the United States, it is not likely that he would have charged those members who differed with him with being governed by interest in the new 'establishments' in the southwest."

Time continued to slip away without definite action concerning an alliance on the part of Spain. M. Gerard assumed to be the spokesman or agent for Spain, and through him communications were had with the Spanish monarch. On February 9, 1779, he informed congress that "the King of Spain, in order to put an end to the tergiversations of England," had made known to that power that he would undertake mediation between her and the United States and that, "the King of Spain, by taking this proceeding upon himself in a friendly manner, has shown a disposition most favorable to the alliance (with the United States)." He therefore asked that congress should hasten to appoint some

person authorized to proceed to Madrid to consider the problems likely to be presented during the negotiations. He also stated that the King of France had suggested that "at a time in which the United States are employed in fixing their political existence, it seems to belong to their foresight to consider the sentiments of the states as to the peace in relation to Spain." The committee of congress appointed to consider the terms upon which peace would be accepted, in pursuance of the mediation of Spain, prepared an elaborate report which was submitted to congress on February 23, 1779, and after being read was ordered to lie on the table until the next Thursday. The report was taken from the table half a dozen times and very critically and fully considered. This seems to have been an earnest and honest attempt on the part of both France and Spain to establish peace between Great Britain and the United States upon the basis of the independence of the colonies. The delay of congress in preparing their ultimata occasioned an earnest appeal from M. Gerard on March 17, to hasten proceedings. Finally the following ultimata were agreed to March 19:

"1. That the thirteen United States are bounded north by a line to be drawn from the northwest angle of Nova Scotia along the highlands which divided those rivers which empty themselves into the river St. Lawrence from those which fall into the Atlantic ocean to the northesternmost head of Connecticut river; thence down along the middle of that river to the forty-fifth degree of north latitude; thence due west in the latitude forty-five degrees north from the equator to the northwesternmost side of the river St. Lawrence or Cadaraqui; thence straight to the south end of Lake Nipissing, and thence straight to the sources of the river Mississippi; west by a line to be drawn along the middle of the river Mississippi from its source to where the said line shall intersect the latitude thirty-one degrees north. South by a line to be drawn due east from the termination of the last mentioned line in the latitude thirty-one degrees north from the equator to the middle of the river Apalachicola or Catahouche; thence along the middle thereof to its junction with the Flint River; thence straight to the head of St. Mary's river; thence down along the middle of St. Mary's river to the Atlantic ocean; then east by a line to be drawn along the middle of St. John's from its source to its mouth in the Bay of Fundy, or by a line to be settled and adjusted between that part of the State of Massachusetts Bay, formerly called the Province of Maine, and the Colony of Nova Scotia, agreeable to their respective rights, comprehending all

islands within twenty leagues of any part of the shores of the United States and lying between lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part and East Florida on the other part shall, respectively, touch the Bay of Fundy and the Atlantic ocean: Provided, that if the line to be drawn from the mouth of Lake Nipissing to the head of the Mississippi can not be obtained without continuing the war for that purpose, then that a line or lines may be drawn more southerly, so as not to be southward of a line in latitude forty-five degrees north.

"2. That every port and place within the United States, and every island, harbor and road to them or any of them belonging, be absolutely evacuated by the land and sea forces of his Britannic Majesty and yielded to the powers of the states to which they respectively belong."*

On the 22d of March, a third resolution relative to the Newfoundland fisheries was adopted; and two days later the fourth resolution was rejected by a vote of 28 to 8, the latter being as follows: "That the navigation of the river Mississippi be acknowledged and ratified absolutely free to the subjects of the United States." The reason why so many voted against this resolution was doubtless because they deemed it impolitic, in view of the known attitude of both France and Spain against such claim, to adopt in so formal a manner a resolution so broad, emphatic and decisive. This action by congress was due to the solicitations of the French minister, who desired to lay before Spain in definite form the demands of the United States. Whether Spain would form an alliance with the United States against Great Britain, depended wholly on the concord likely to be reached between Spain and the United States on the questions of boundaries and the navigation of the Mississippi.

Late in 1778 and early in 1779, M. Gerard, the French minister to Philadelphia, endeavored to induce congress to agree to the conditions required by the king of Spain, in order to secure his active services as an ally against Great Britain. He assured the Committee of Foreign Affairs of congress "that his King would not prolong the war for a single day to secure to the United States the possessions which they coveted."† At this time congress did not ask for more than an extension of their western limits to the Mississippi and the permanent right to navigate that river from

* Diplomatic Correspondence, secret.

† Spark's Manuscripts: Harvard College.

its source to the sea. But M. Gerard informed them that in his opinion the United States already had more territory than they could easily administer, and expressed a hope that there would never be more than thirteen states unless Canada became the fourteenth. In order to assist Spain, France, at the commencement of the Revolution, had asked her to recognize the independence of the United States, that she might have a basis for the negotiations which should result from the war; but instead of doing so she reserved such right in a special article attached to the treaty between France and the United States. Spain sought for the possession of the river and the port of Mobile, the acquisition of Pensacola, and all of the coast of Florida along the Bahama channel. In order to favor Spain and curb the pretensions of the United States the French minister supported the demands of the former and was curt and severe in the endeavor to effect his objects. In a formal interview with congress on February 15, 1779, he announced that Spain put the price of declaring war against Great Britain and of joining France and the United States in the struggle at the possession of Pensacola and the exclusive navigation of the Mississippi, and declared that if these conditions were not agreed to she might join England instead of the United States. As it was vastly to the interests of France to have Spain join against Great Britain, the course of the French minister becomes clear in trying to satisfy Spain at the expense of the United States. But the importance of navigating the Mississippi was fully recognized this early by the members of congress, and they did not readily agree to its relinquishment.

In a letter dated May 27, 1779, M. Gerard urged congress to hasten action anew in regard to the concessions to Spain. "It is only by enabling the court of Spain to bring its mediation to its critical and decisive point that it can be hoped that this power, convinced of the injustice of the views and of the ambition of England, will join the alliance, acknowledge the independence of the United States, and take an active part in the war. On the contrary, by delaying, without communicating to the parties interested the motives which induce them to it, the states will be in danger of fatiguing this power, which keeps on foot the forces of the whole monarchy, principally with a view to give respectability to a mediation which appears to be neglected; they incur the risk of cooling the good will of his Catholic Majesty, and perhaps of alienating him as much by delays as if resolutions contrary to the system which he has appeared disposed to favor by his mediation should give him lawful reasons for changing his

conduct. The alliance will thus be deprived of a decisive support, which the goodness of its cause, the wisdom of its conduct and the close union subsisting between France and Spain seemed to promise it. . . . The season is already so far advanced that this same uncertainty, by destroying the hope of seeing Spain declare herself during the course of the present campaign, leaves France alone exposed to the efforts of the principal body of the enemy's forces. The wisdom of congress and the faithful attachment which they show on every occasion is as conspicuous as it is satisfactory to the alliance, and the respect which they have always expressed for Spain, do not permit a doubt as to the attention which they will be pleased to give to considerations of such importance."

This was an elaborate and round-about effort of the French minister to secure the passage of strong resolutions of congress in favor of Spain in order to win the immediate alliance of the latter and thus engage her assistance to repel the early-expected attack of a fresh and threatened expedition of the British. Of course congress was aware that M. Gerard expected them to make large concessions to Spain at this critical juncture, as much to save the armies of France as those of the United States. On the other hand, it was not deemed wise to concede immensely valuable rights to Spain, when, with the assistance of France, congress felt able to crush the British armies and the British fleets. They did not, therefore, surrender everything Spain desired in order to gain her active co-operation in the war. In the fall of 1779, M. Gerard was superceded by Chevalier de la Luzerne, who continued the policy of the former. On June 21 Mr. Lee wrote, "I have the honor to inform congress that Spain has declared against Great Britain and that their respective ambassadors are recalled. A part of the Spanish fleet has joined that of France, which makes it outnumber that of England."*

Spain saw that, owing to the demands of the United States, there was certain to be contentions between the two countries, should the latter gain their independence. It was therefore out of the question for her to form an alliance with the revolting colonies, unless they should recede from their demands on the Mississippi. But if she remained silent, the States would, with the assistance of France, win their independence, and at the same time probably secure by conquest the Floridas and in consequence the permanent and free navigation of the Mississippi. This would

* [illegible] correspondence, secret.

be their undoubted right could they accomplish it. To prevent this result, Spain was forced to declare war against Great Britain. She rightly concluded that while England was engaged with the rebellious colonies, she could make a conquest of the Floridas and thus be in possession of them and therefore the mouth of the Mississippi upon the conclusion of peace. She would thus be in a much better situation than if she joined the colonies. She therefore declared war against England and concluded a secret treaty April 12, 1779, with France, but did not secure by the latter any advantages over the United States.

After a discussion lasting more than six months, congress finally, on September 17, 1779, adopted the following resolution:*

"Whereas, By the treaties subsisting between his Most Christian Majesty (of France) and the United States of America, a power is reserved to his Catholic Majesty (of Spain) 'to accede to said treaties and to participate in their stipulations at such times as he shall judge proper,'" etc.

"And whereas, Should his Catholic Majesty accede to the said treaties without any alteration, he must be under the necessity of renouncing forever all claims to the possession of the Floridas, of the utmost consequence to his kingdom, and more particularly to his American dominions. In order, therefore, that nothing may by wanting on the part of these States to further a treaty of alliance and of amity and commerce with his Catholic Majesty, consistent with the engagements of the said States and agreeable to his most Christian Majesty, their ally,

"Resolved, That if his Catholic Majesty shall accede to the said treaties, and in concurrence with France and the United States of America, continue the present war with Great Britain for the purpose expressed in the treaties aforesaid, he shall not thereby be precluded from securing to himself the Floridas. On the contrary, if he shall obtain the Floridas from Great Britain, these United States will guaranty the same to his Catholic Majesty: provided always that the United States shall enjoy the free navigation of the river Mississippi into and from the sea.

"Resolved, That a committee be appointed to prepare instructions conformable to the foregoing resolutions."

It will be noted in these resolutions how alluringly the bait of the Floridas was presented, and how it was made to appear that their acquisition by Spain depended on an alliance with the United States. There can be no doubt that the reason why Spain did not

* Diplomatic Correspondence, secret.

conclude such a treaty with the colonies at the outset, as France did, was because she was differently situated than France, and her interests were likely to suffer by such an alliance. Accordingly, at the commencement of the Revolution, Spain only favored a redress of grievances for the colonies. Her statesmen saw that the proximity of the United States to Louisiana and the Spanish West Indies, was a menace to the Spanish American possessions. Spain had nothing to gain by an alliance with the United States, unless the latter should renounce to her the Floridas which she coveted; but she expected to gain them without such an alliance while England was busy with her rebellious colonies. She wisely concluded that, in any event, it was necessary for her to move with extreme prudence and caution. She disliked England, was the firm friend of France, and wished to gain the friendship of the United States. She likewise thought that, should the colonies fail to gain their independence, it would be to her advantage to remain in the good graces of England, her nearest neighbor in America. The people of New Orleans and of all the other Louisiana colonies feared the encroachments of the Americans, who had begun already to push their settlements into the valley of the Ohio and to send their produce down the Mississippi to New Orleans. This fear is all the more noteworthy by reason of the exclusive policy of Spain in regard to the trade of her colony of Louisiana. As the war progressed it was developed that her ambition was to gain the Floridas with a boundary as far north as possible and the exclusive navigation of the river Mississippi and that of the Gulf of Mexico. It was clearly developed that the apprehensions of the Spanish sovereign of future dissensions, and perhaps wars, with the United States, the differences in regard to American colonial boundaries, and the disagreement over the right to navigate the Mississippi river, were the principal obstacles during the Revolution to a treaty between Spain and the United States.

But the colonies, in their struggle, needed assistance—money, soldiers, ships, munitions—and accordingly, in September, 1779, appointed John Jay minister plenipotentiary to the court at Madrid, with powers of concluding a treaty with Spain similar to the one concluded with France in 1778, or if that could not be accomplished, to secure such assistance as was possible. He was specially instructed with the above resolutions of congress of September 17, 1779, and was further instructed September 25 as follows: "You are particularly to endeavor to obtain some convenient port or ports below the thirty first degree of north lati-

tude on the river Mississippi for all merchant vessels' goods, wares, and merchandises belonging to the inhabitants of these States.' On October 13, 1779, a motion in congress to recede from the claim of a free navigation of the Mississippi below the thirty-first degree on condition that Spain would grant a free port below such parallel of latitude was lost. On February 2, 1780, congress was informed by the French minister of state that before Spain could be induced to treat with the United States, the King of Spain desired the views of congress on "certain articles which his Catholic Majesty deems of great importance to the interests of his crown, and on which it is highly necessary that the United States explain themselves with precision and with such moderation as may consert with their essential rights." The articles were as follows:*

"1. A precise and invariable western boundary to the United States. 2. The exclusive navigation of the river Mississippi. 3. The possession of the Floridas. 4. The lands on the left or eastern side of the river Mississippi."

In regard to the first article, Spain maintained that the United States extended no farther westward than the line mentioned in the proclamation of the King of England of October 7, 1763,—a line extending approximately north and south a little west of the Alleghany mountains, thus leaving all the country to the westward as far as the Mississippi river in the possession of the Indians and hence subject to the colonization, conquest and settlement of any country. Taking into consideration this view of the first article, the second was construed that, inasmuch as the United States could claim no land abutting on the Mississippi, they had no right to the free navigation of that river. In regard to the third article, it was argued that, as Spain would herself wrest the Floridas from Great Britain during the war, every source of dispute concerning them would thereby be removed. Under the fourth article, it was contended that the Indian country lying west of the line referred to in the proclamation mentioned above and east of the Mississippi river was open to conquest from Great Britian by the arms of Spain. This was the Spanish view of the situation in February, 1780. She took the position that, as Great Britain had omitted to include the country east of the Mississippi and west of the line mentioned in the proclamation in one of the governments she had organized out of the territory secured from France by the treaty of 1763, she herself had left

* Diplomatic Correspondence, secret

the country with the Indians; and that, therefore, Spain had as much right to enter it and take possession as had Great Britain. Congress was thus informed by the French minister of state that the above outline embraced the Spanish view of the situation in America, and was requested to indicate the position which the United States expected to assume. This would be necessary before Spain was willing to consider the subject of a treaty with congress.

Mr. Jay, in replying to this inquiry, took the position that France had possessed all the Indian country above mentioned previous to 1763, having secured it by exploration and settlement, particularly at Detroit, and on the Wabash, Illinois and other rivers and elsewhere; that Great Britain, by the treaty of 1763, had obtained the country from France, with the western boundary in the middle of the Mississippi river; that, in order to retain the friendship of the Indian inhabitants therein, she had purposely excluded the country from any of her other American colonies; and that she had reserved the country for future settlement, when she should purchase the claims of the Indians residing therein.* In support of this view he cited the treaty of 1763 and the proclamation of the English King of October 7, 1763, of which the following extracts will be sufficient to illustrate his argument:

"And whereas, It is just and reasonable and essential to our interest, and the security of our colonies, that the several nations or tribes of Indians, with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to, or purchased by us, are reserved to them or any of them, as their hunting grounds."

. . .

"No governor or commander in chief of our other colonies or plantations in America (meaning the English colonies along the Atlantic and the Floridas) shall presume for the present, and until our further pleasure be known, to grant, warrant or survey, or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic ocean from the west or northwest; or upon any lands whatever which, not having ceded to, or purchased by us, as aforesaid, are reserved to the said Indians, or any of them. And we do further declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve unto our sovereignty, protection and dominion, for the use of the

* Life of John Jay.

said Indians, all the lands and territories not included within the limits of our said three new governments; as also all the land and territories lying to the westward of the sources of the rivers which fall into the sea from the west and northwest as aforesaid; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved without our especial leave and license for that purpose first obtained."*

. . .

Mr. Jay maintained that the English title from France to the country westward to the Mississippi was absolute, and that the proclamation of the king proved that England did not relinquish the country to the Indians, but on the contrary made ample provisions for their security, protection and government by excluding settlers from the country, the appointment of agents to keep in friendly communication with them, and otherwise. That being true, the United States, taking their title from the British and that title not having been previously questioned, was entitled to the country westward to the middle of the Mississippi, and, therefore, to the free navigation of that stream.

At this point of the discussion the whole subject was permitted to remain quiet for a period; and in the meantime Mr. Jay pressed the consideration of a treaty with the United States. In April, 1780, the Count de Florida Blanca, representing Spain, propounded a series of questions, under the insistence of Mr. Jay, concerning the civil and military strength of the United States, their resources in remote particulars and ability to continue the war, their power, should she need it, to assist Spain in case she became their ally, the strength of their marine, etc.† These questions were so searching that several members of congress took umbrage and alarm and counseled the unwisdom of revealing so minutely the military strength of the colonies. Mr. Jay, however, answered them as fully as seemed consistent with safety and dignity, stating, among other things, that the United States would assist Spain in two ways: Either by fighting her enemies or by advantages of commerce. He urged that, as Spain was already at war with Great Britain, she should now unite with the United States against the common enemy.

On May 11, 1780, the Count de Florida Blanca informed Mr. Jay that there was but one obstacle from which he apprehended

* Annual Register (English). Vol. VI.
† Diplomatic Corr[illegible]

any great difficulty in agreeing to the terms of the proposed treaty and that "arose from the pretentions of America to the navigation of the Mississippi." He stated that, while congress had at first claimed such right, they had afterward relinquished it, but had again "made it an essential condition of the treaty." He observed that the king of Spain "was firmly resolved in his mind" on the questions of boundary and the navigation of the Mississippi, that he was not likely to recede, though he desired to aid the Americans, and that he had recently taken steps to inform himself fully in regard to the disputed points. Mr. Jay replied that congress considered that several of the states were bounded on the west by the Mississippi river, and were, therefore, interested in its navigation, but were willing to regulate disputed questions so as to make Spain secure. The count reiterated that he was confident the king would not relinquish the navigation of the Mississippi, and expressed the hope that some way around the obstacle could be found.

On May 26, 1780, Mr. Jay wrote as follows to congress: "If congress remain firm, as I have no reason to doubt, respecting the Mississippi, I think Spain will finally be content with equitable regulations, and I wish to know whether congress would consider any regulations necessary to prevent contraband as inconsistent with their ideas of free navigation." Spain was unfortunately situated. She realized that, if the American colonies were able to defend themselves against an army of eighty thousand troops sent against them, they would not in the least fear Spain, should they gain their independence; would, in short, be able to enforce any claim they might make. They would be able to force their contraband, or forbidden goods, into the Spanish American colonies—into Louisiana—despite the exclusive policy of Spain and the protests of the inhabitants of that province. The relinquishment of the navigation right meant the absolute surrender of the Spanish ambition to own the exclusive navigation of the Gulf of Mexico and of the Mississippi and meant the consequent invasion of contraband into New Orleans and every other settlement in Louisiana to the crushing injury of Spanish commerce. The inhabitants of New Orleans protested against such a possibility, and the policy of Spain became emphatic never to surrender the question of navigation. The Spanish policy was to exclude the goods of all other nations from Louisiana, in order to give the manufacturers of Spain the benefit of exclusive trade with that colony. The navigation of the Mississippi by other nations, it was manifest, would countervail the Spanish policy and flood

Louisiana with the cheap goods of other countries—with the undesirable goods of the United States. This could not be countenanced, and hence the exclusive navigation must remain with Spain. This was the position of that country.

William Carmichael, American chargé d'affairs at the court of Madrid, wrote from St. Ildefonso, on August 22, 1780, to the committee of foreign affairs of congress, that "the navigation of the Mississippi appears to be the great, and if we can credit the assertions of men in power, the sole obstacle" to an agreement concerning terms to be embodied in the proposed treaty. As a matter of fact, Spain and the United States had little or nothing in common. The latter wanted assistance, particularly of money; and the former wanted the exclusive navigation of the Mississippi. Neither seemed disposed to yield, so there was abundant room for the diplomats to display their talents. To the American requests for a loan, Spain replied that such demands should be made on France, the ally of the United States, and the one receiving all the benefits of their trade.

In a letter dated September 25, 1780, Mr. Carmichael said, referring to a conversation that had taken place between Mr. Jay and the Count de Florida Blanca, "In the course of this conference the Count de Florida Blanca asserted with warmth that the king would never relinquish the navigation of the Mississippi, and that the ministry regarded the exclusive right to it as the principal advantage which Spain would obtain by the war. This being the bar to the treaty, it seems not improbable that this court (Spanish) will not be in a hurry to treat with us, but rather trust to her interest in a general congress for peace to obtain her favorite objects."

The following extract from a letter of October 3, 1780, from Benjamin Franklin to Mr. Jay states the American position at that date admirably: "If you are not so far private in Spain, continue, however, the even good temper you have hitherto manifested. Spain owes us nothing; therefore, whatever friendship she shows us in lending money or furnishing clothes, etc., though not equal to our wants and wishes, is, however, *tant de gagne* (so much gain). Those who have begun to assist us are more likely to continue than to decline, and we are still so much obliged as their aid amounts to. But I hope and am confident that court will be wiser than to take advantage of our distress and insist on our making sacrifices by an agreement which the circumstances of such distress would hereafter weaken, and the very proposition can only give disgust at present. Poor as we are, yet as I know

we shall be rich, I would rather agree with them to buy, at a great price, the whole of their right on the Mississippi than sell a drop of its waters. A neighbor might as well ask me to sell my street door."*

That remarkable letter exhibits the intellectual precision of the writer, the accuracy of his views, the breadth of his statesmanship, the wisdom of his counsels, and the steadfast purpose of the American leaders of the revolutionary period. It reveals the diplomatic spirit to an astonishing degree, as well as the severity of the straits under which the colonies continued their heroic struggles.

In October, 1780, congress instructed Mr. Jay to adhere to their former instructions to him concerning the right to navigate the Mississippi and, if it could be accomplished, to secure from Spain an acknowledgment of that right; to explain that the Mississippi was the western boundary of several of the states, and that the United States, while connected with Great Britain, had been accustomed to the privilege of navigating that stream; and to assure the Spanish court that the mutual use of the river would in no wise jeopardize the interests or the peace of the Spanish American colonies nor of Spain. He was further instructed that, if an admission of the right of the United States to navigate the Mississippi above the thirty-first degree and to have a port or ports below that parallel could be secured, he might enter into such regulations as would secure the Spanish colonies against American contraband. He was told that it was of the utmost importance to the United States, should Spain gain the Floridas, to possess the right not only to navigate the Mississippi, but the rivers that had their sources in the states and flowed south through the Floridas into the Gulf, and to use every effort in his power to gain such concessions. If he could secure these rights, he was instructed to guarantee the Floridas to Spain.

In November, 1780, Mr. Jay offered the following pungent remarks to M. Cardoqui in answer to his offer to buy the navigation of the Mississippi: "I told him that object could not come in question in a treaty for a loan of a hundred thousand pounds, and Spain should consider that to render alliances permanent they should be so formed as to render it the interest of both parties to observe them; that the Americans, almost to a man, believed that God Almighty had made that river a highway for the people of the upper country to go to sea by; that this country was extensive and fertile; that the general, many officers, and others of dis-

* Life of Benjamin Franklin

tinction and influence in America were deeply interested in it; that it would rapidly settle, and that the inhabitants would not readily be convinced of the justice of being obliged either to live without foreign commodities and lose the surplus of their productions or be obliged to transport both over rugged mountains and through an immense wilderness to and from the sea, when they daily saw a fine river flowing before their doors and offering to save them all the trouble and expense and that without injury to Spain."*

But M. Gardoqui replied lightly to this sonorous speech and declared that the present generation would not want this navigation and it should be left to future generations to manage their own affairs. It was about this time, also, that the Count de Florida Blanca informed Mr. Jay that if Spain could not keep all of the nations out of the Gulf of Mexico, she should admit all; that the king would never relinquish the navigation of the Mississippi and the Gulf; that the Spanish minister regarded this as the principal object to be gained by Spain in the war; with that gained he would not care if Spain gained no other cession; that he considered it more important than the acquisition of Gibraltar; and that if they could not get it, it was a matter of indifference whether the British possessed Mobile or not.

These remarks of the Count de Florida Blanca and the above extracts from the letters both of Mr. Jay and Mr. Franklin reveal the tension that existed between the two countries in regard to the navigation of the Mississippi (and the Gulf of Mexico) by Spain. The whole ambition of Spain during the later stages of the war was to secure to herself the exclusive right to navigate the Gulf; hence she began war against England, not as the friend of France, not as an ally of the United States, to secure the Floridas. Her possessions would then encircle the Gulf, and her right to its exclusive navigation could be maintained by her colonial policy of exclusion. But if she lost the exclusive navigation of the Mississippi, she likewise lost the exclusive navigation of the Gulf, and, therefore, she bent every effort of diplomacy with the United States and of war with Great Britain to gain her object. She offered a large sum of money to the United States with the hope that they would yield. She advanced part of it and then artfully withheld the balance, when the colonies were in their sorest straits near the close of the long struggle, hoping their necessities would induce them to surrender the coveted prize—

* Diplomatic Correspondence, secret.

the navigation of the Mississippi. She professed the warmest friendship for the colonies and meant it, but studiously gave them no advantage that was not aimed at the accomplishment of her object. Her ministers used every art and argument, and even secured the earnest, active and moral support of the French court, and would have been successful, owing to the dire extremity of the colonies, had not the colonial leaders seen that the navigation of the Mississippi was absolutely essential to the growth and prosperity of the upper Mississippi valley.

In his letter of November 6, 1780, to congress, Mr. Jay said: "In my opinion we should endeavor to be as independent on the charity of our friends as on the mercy of our enemies. Jacob took advantage even of his brother's hunger, and extorted from him a higher price than the value of the Mississippi even for a single dinner. The way to be not in Esau's condition is to be prepared to meet with Jacob's." But the valiant talk of the colonial leaders did not clothe the continental army, nor provide them with necessary food, munitions and arms. The soldiers were in rags, barefooted, unpaid, scantily provided with food, and in many instances wholly destitute of medical stores. Russia and other countries of Europe were endeavoring by mediation to restore peace. England herself was extending tempting offers to induce the rebels to lay down their arms. Many in the United States were tired of the war, and were willing to concede almost anything to secure peace. The pressure brought to bear upon congress could scarcely be sustained by that body. In this memorable extremity they finally, on February 15, 1781, prepared and adopted the following letter of instructions to Mr. Jay.

"Sir: Congress having since their instructions to you of the 29th September, 1779, and 4th October, 1780, relative to the claim of the United States to the free navigation of the river Mississippi and to a free port or ports below the thirty-first degree of north latitude resumed the consideration of that subject; and being desirous to manifest to all the world, and particularly to his Catholic Majesty, the moderation of their views, the high value they place on the friendship of his Catholic Majesty, and their disposition to remove every reasonable obstacle to his accession to the alliance subsisting between his most Christian Majesty and these United States, in order to unite the more closely in their measures and operations three powers who have so great a unity of interest, and thereby to compel the common enemy to a speedy, just and honorable peace, have resolved and you are hereby instructed, to recede from the instructions above referred

to, so far as they insist on the free navigation of that part of the river Mississippi which lies below the thirty-first degree of north latitude and on a free port or ports below the same, provided such cession shall be unalterably insisted on by Spain, and provided the free navigation of the said river above the said degree of north latitude shall be acknowledged and guaranteed by his Catholic Majesty to the citizens of the United States in common with his own subjects: It is the order of congress at the same time that you exert every possible effort to obtain from his Catholic Majesty the use of the river aforesaid with a free port or ports below the said thirty-first degree of north latitude for the citizens of the United States under such regulations and restrictions only as may be necessary safeguard against illicit commerce."*

This letter had been introduced by the representatives from Virginia in pursuance of instructions from their constituents. A motion made to defeat its adoption by congress was lost. New Hampshire, Rhode Island, New Jersey, Pennsylvania, Delaware Maryland, Virginia, South Carolina, and Georgia voted for its adoption. Massachusetts voted against it, and Connecticut, New York and North Carolina each deposited a split vote. It was thus adoted. Mr. Jay was much displeased with this action and said: "I flatter myself that congress will never again attempt to form an alliance on principles of equality *in forma pauperis* (as a poor man). Before their ungenerous letter on our right to the Mississippi arrived, it was known in Europe, and the substance of my last instructions on that head were not secret here before they reached this side of the ocean."

He reported at this time that every act of congress was known in Europe before he was officially apprised of its passage and stated that his letters were opened in Spain and that many of them never reached him. On April 25, 1781, he said in a letter to congress: "There is more reason to suspect that the French court were apprised of their contents (the letters addressed to him) before they arrived, and to believe that the construction of the treaty, by which the navigation of the Mississippi is supposed to be comprehended in the guaranty, does not correspond with their ideas on that subject. The court (at Madrid) continues pertinaciously to insist on our ceding that navigation, nor will they, as yet, listen to any middle course."

Spain perceived at this time that the States were almost certain to gain their independence. She had practically taken possession

* Diplomatic Correspondence, secret.

of the Floridas, had catured a few posts in the Upper Mississippi country to the east of that river, had established herself at Natchez, watched every act of congress, and waited as patiently as a leopard at a deer lick for the states to yield the navigation of the Mississippi. From Havana at first, and later from the Florida and Louisiana ports, her troops made steady advances into the British possessions above the thirty-first degree of north latitude. She did everything in her power, with the sanction and support of the Louisianians, to gain the Mississippi by her conquests on its banks. Many of the Louisianians enlisted in her armies and were the first to invade the country to the east of the Mississippi and above the thirty-first degree of north latitude. She advanced more money to the Americans under professions of earnest sympathy and friendship. Her ministers redoubled their efforts to obtain through the arts of diplomacy the paramount object—the navigation of the Mississippi. Her conquests in America above the thirty-first degree of north latitude were designed to fasten and strengthen her claims on the country to the east of the Mississippi, as against the claims of the states when peace should be proclaimed. Her ministers played with the necessities of the colonies and their requests for money and munitions as a cat with a mouse.

Samuel Huntington, president of congress, in a letter dated May 28, 1781, revealed to Mr. Jay the object of receding from the claim to navigate the Mississippi. He said: "Congress have little doubt that the great obstacle to your negotiations will be removed, and that you will not only be able without further delay to conclude the proposed alliance with his Catholic Majesty, but that the liberality and friendly disposition manifested on the part of the United States by such a cession will induce him to afford them some substantial and effectual aid in the article of money."

The original articles of instruction to Mr. Jay were drafted by Mr. Madison.* After the fall of Charleston the danger to the colonies seemed so great and the aid of Spain seemed so essential, that congress had receded somewhat from the original instructions. In addition to this, Mr. Jay was given greater discretion in regard to details; but this he did not relish, because, should he make a mistake, he would suffer severe criticism regardless of his honest intentions. He said in his letter to congress, May 19, 1781, "The cession of this navigation will, in my opinion, render a future war with Spain unavoidable, and I shall look upon my subscribing to the one as fixing the certainty of the other."

* Narrative and Critical History of America: Winsor.

But time passed and Spain seemed no nearer accepting the advantages under the revised instructions than she had been under the former. Mr. Jay informed the Spanish minister that the United States could do no more and said: "Even if a desire of gratifying his Majesty (the King of Spain) should ever incline congress to yield a point so essential to their interests yet it still remained a question whether new delays and obstacles to a treaty would not arise to postpone it." He complained to congress that the United States assumed the attitude of a petitioner, and that, accordingly, Spain treated her as such. He reiterated that the modified instructions of February 15, 1781, should have been secret. The Spanish statesmen came to the conclusion, by reason of the suppliant attitude of the states, that another effort on their part would secure the navigation of the Mississippi. Mr. Jay could accordingly do nothing. He was told that the surrender of the Mississippi absolute and without reservation would remove the only bar to a treaty similar to that with France.

The modified proposition of February 15, 1781, was no additional inducement to Spain to conclude the treaty. The right of the United States to navigate the Upper Mississippi would prove an entering wedge to the navigation of the whole river and the Gulf.* That advantage must never be conceded. Spain thus far had received from the United States "nothing but good words and fair assurances." The friendly disposition of Spain toward the United States should influence congress to grant the navigation of the Mississippi. The king regarded the navigation of that river more important than the possession of Gibraltar; all nations must be excluded from the Mississippi and the Gulf; that was the immemorial policy of Spain; the king would never recede; America had done nothing to assist Spain; the latter had refused tempting offers from Great Britain to turn against the United States; the blindness of congress prevented the conclusion of a treaty; the relinquishment of the Mississippi would remove the only bar to the treaty. This was the position of Spain in the summer of 1781. Nothing short of the absolute relinquishment of the Mississippi would satisfy Spain. This meant that the western boundary of the United States would be established east of the Mississippi, and Louisiana would accordingly embrace the whole course of that noble stream. There were no railways then; the river was the only commercial carrier; it meant the enslavement of the western country by Spain. So thought Mr. Jay; so thought

* Remarks of the Spanish Minister of State.

congress. However, Mr. Jay followed his instructions and submitted the following proposition to the Spanish ministry:

"1. The United States shall relinquish to his Catholic Majesty, and in future forbear to use, or attempt to use, the navigation of the river Mississippi from the thirty-first degree of north latitude—that is, from the point where it leaves the United States—down to the ocean.

"2. His Catholic Majesty shall guarantee to the United States all their respective territories.

"3. The United States shall guarantee to his Catholic Majesty, all his dominions in North America.

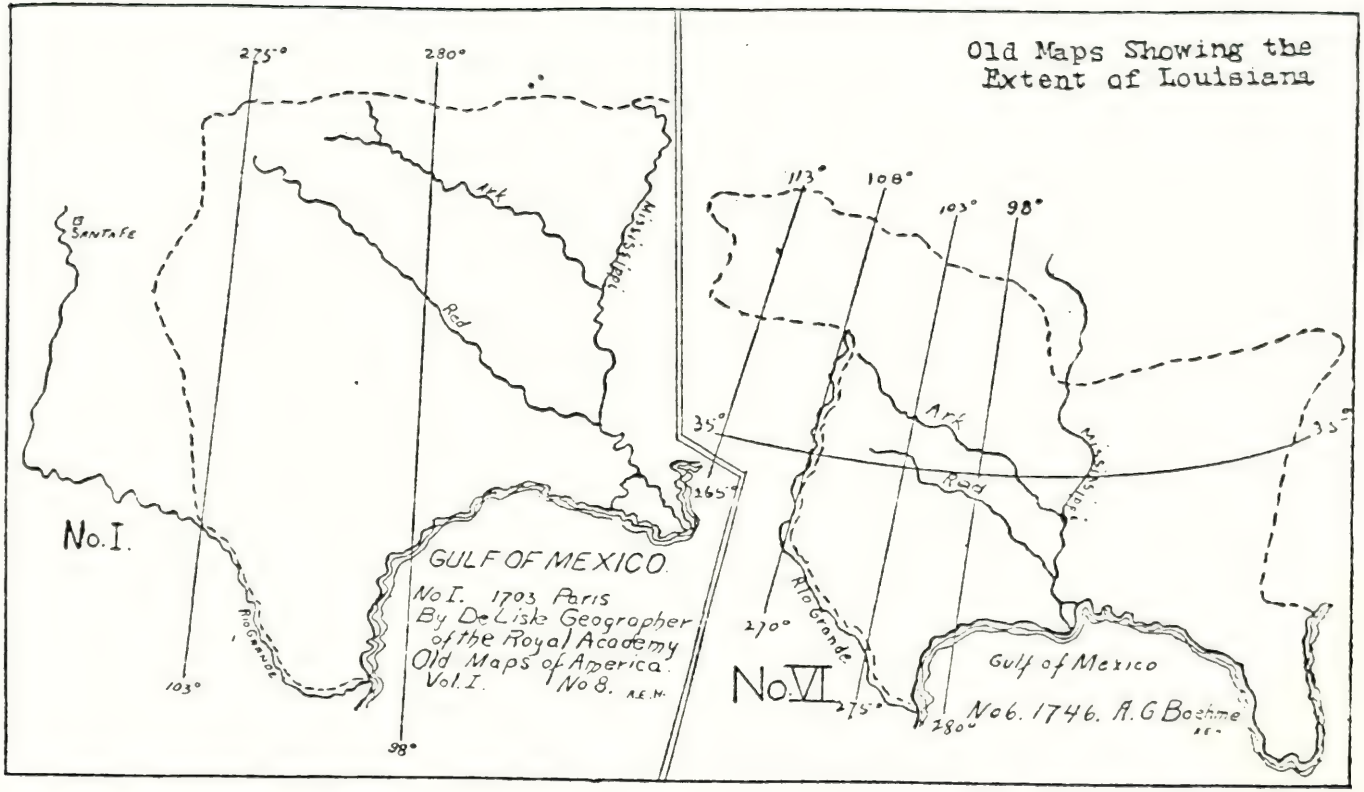
"4. Spain shall at once acknowledge the independence of the United States, and so long as she continued to do so the first article should be binding upon the United States.

"5. The King of Spain himself shall specify what goods should be considered contraband in Louisiana."

In presenting this proposition Mr. Jay said, he "could conceive of nothing in the power of congress to do which could more fully evidence their disposition to gratify his Majesty than their having offered to recede from their claim to the navigation of the Mississippi though the preservation of it was deemed of the highest importance to their constituents." But the proposition fell far short of what Spain desired and so no progress was made: On October 3, 1781, Mr. Jay wrote to congress, "I think it is their design (Spain's), therefore, to draw from us all such concessions as our present distress and the hopes of aid may extort, and by protracting negotiations about the treaty endeavor to avail themselves of these concessions at a future day when our inducements to offer them shall have ceased. As this would evidently be unjust, I think the limitation in question can give them no offense." The limitation referred to was embraced in article four above. The refusal or neglect of Spain to accept the modified proposition spurred congress, April 30, 1782, to pass the following resolution:

"*Resolved*, That the minister plenipotentiary of the United States at the court of Madrid be informed that congress entirely approves of his conduct as detailed in his letter of the 3d of October last; and that the limitation fixed by him to the proposed surrender of the navigation of the Mississippi in particular corresponds with the views of congress; that they observe, not without surprise and concern, that a proposition so liberal in itself, and which removed the only avowed obstacle to a connection between the United States and his Catholic Majesty, should not have pro-

Old Maps Showing the Extent of Louisiana



duced greater effects on the counsel of the latter; that the surrender of the navigation of the Mississippi was meant as the price of the advantages promised of an early and intimate alliance with the Spanish monarchy; and that if this alliance is to be procrastinated till the conclusion of the war the reason of the sacrifice will no longer exist; and that as every day which the proposed treaty is delayed detracts from the obligation and inducement of the United States to adhere to their overture, it is the instruction of congress that he urge to the ministry of his Catholic Majesty the obligation it imposes on Spain to make the treaty the more liberal on her part, and that in particular he use his endeavors to obtain in consideration of such delay either an enlargement of her pecuniary aid to the United States, a facilitating of the use of the Mississippi to the citizens thereof or some peculiar indulgences in the commerce of the Spanish colonies in America."*

In August, 1782, Mr. Jay, who was then in Paris, held an important interview with the Count de Aranda, the Spanish ambassador to France, on which occasion the latter asked what the United States claimed as their boundaries. Mr. Jay replied, down the river to the thirty first degree of north latitude and thence east over the old course to the ocean. Whereupon, the count interposed the following objections: That the western country had never belonged to, nor been claimed by, the ancient colonies; that previous to 1763 it had belonged to France; that it had then passed to Great Britain, but during the present war Spain had won it by conquest, having established posts at Natchez and at several places in the Upper Mississippi country; that if Spain's right did not extend over all of that country, it was held by the Indians; and that, therefore, the western boundary of the United States should be far east of the Mississippi. Later, he indicated on a map such boundary "from a lake near the confines of Georgia, but east of the Flint river to the confluence of the Kanawha with the Ohio, thence round the shores of Lakes Erie and Huron and thence round Lake Michigan and Lake Superior." Both Mr. Jay and Mr. Franklin (who was present) insisted that the Mississippi was the western boundary and that the United States possessed the right to navigate that stream. They stated, in effect, that this was the ultimatum of the United States. The Count de Vergennes, French minister of state, expressed the opinion that the United States claimed too much. He maintained that England herself, by the king's proclamation of October 7, 1763,

* Diplomatic Correspondence, secret

had excluded the western country from her possessions when she spoke of the country between the Mississippi and "the ancient English establishments," meaning the Atlantic colonies. But both Mr. Jay and Mr. Franklin asserted that the proclamation, as a whole, would sustain no such contention. The Count de Vergennes further expressed his opinion that Spain could not claim any country above Natchez; that the western boundary of the United States should be on a line up through Alabama to the Cumberland river and down the same to the Ohio; and that Spain was entitled to the Mississippi river. This was one of many similar interviews between the statesmen of France, Spain and the United States. The navigation of the Mississippi was the bone of contention. The attempt of Spain to establish the boundary far east of the Mississippi was only to give her a stronger claim to that stream. The French court favored the claims of Spain. At this point the discussion was temporarily postponed by the conclusion of the preliminary articles of peace between the United States and Great Britain.

The course of Spain is thus shown to have been vacillating and selfish from beginning to end. At the commencement of the revolution there is nothing to show that she expected to gain any accession of territory on the American continent as a result of the war. The straits of the struggling colonies suggested to her the opportunity to gain the Floridas either from the United States or Great Britain. She first endeavored to gain them from Great Britain, but the latter would not relinquish them because she expected to retain them. She then declared war against Britain for the purpose of wresting the Floridas from the English crown, but would not join the alliance of France and the United States because she expected by maneuvering to gain the exclusive navigation of the Mississippi from the latter. Toward the close of the war she was in possession of the Floridas, and had made every effort to extend her claims eastward of the Mississippi in the upper portion of the valley of that stream. She had taken possession of the Natchez, had sent troops to the Walnut Hills (Vicksburg) and to the Chickasaw Bluffs (Memphis), had strengthened with her colonists the French settlements in the Illinois country, had taken possession of the country across the Mississippi opposite the post of the Arkansas, and had captured St. Joseph, Michigan, by an excursion in midwinter from St. Louis. And she managed to do all this without incurring the least opposition from the Americans. The latter were too busily engaged elsewhere to observe the encroachments of Spain upon

their probable preserves. But the Spanish design was to render as strong as possible her claims to the territory as far eastward as the Alleghany mountains. This was her demand as early as the year 1780. The concessions by congress, the practical surrender of the navigation of the Mississippi, the yielding policy of many of the American statesmen, particularly Mr. Morris, and the desperate straits of the colonies, were coldly employed by Spain to stretch her claims in America to the utmost. France, in order to gain her assistance in the struggle against Britain, yielded to her solicitations to favor her claims in America as against the United States.

CHAPTER II

The Navigation of the Mississippi River, 1783-1799

AFTER having signed the treaty of Paris of 1783, the Spanish minister, Count de Aranda, addressed a secret memoir to the king, declaring his belief that the American colonies, which had just secured their independence from Great Britain through the assistance of France and Spain, would some day menace the Spanish-American possessions, and that both France and Spain, in espousing the cause of the colonies, acted in opposition to their best interests. He said:

"This federal republic is born a pigmy, if I may be allowed so to express myself. It has required the support of two such powerful states as France and Spain to obtain its independence. The day will come when she will be a giant, a colossus, formidable even in these countries. She will forget the services she has received from the two powers and will think only of her own aggrandizement. The liberty of conscience, the facility of establishing a new population upon immense territories, together with the advantages of a new government (meaning free), will attract the agriculturalists and mechanics of all nations, for men ever run after fortune; and in a few years we shall see the tyrannical existence of this very colossus of which I speak. The first step of this nation after it has become powerful, will be to take possession of the Floridas in order to have command of the Gulf of Mexico, and after having rendered difficult our commerce with New Spain, she will aspire to the conquest of that vast empire, which it will be impossible for us to defend against a formidable power established on the same continent and in its immediate neighborhood. These fears are well founded; they must be real-

ized in a few years if some greater revolution even more fatal does not sooner take place in our Americas.†

He suggested, as the best means of averting this danger, that Spain should surrender the Americas, retain Porto Rico and Cuba, and establish three of the infantas, one to be king of Mexico, one of Costa Firme and the other of Peru. The correctness of this prediction seems almost unaccountable. Everything, and more, which he predicted has come to pass. All the possessions of Spain have in turn through one cause or another been swept away—the Floridas, Mexico, Central America, Peru, Porto Rico and Cuba. The young republic has become a colossus far higher than even he dared to dream, and Spain has become correspondingly a pigmy where once she strode with queenly dignity and power. It is interesting to note his opinion that the colonies owed their independence to the assistance of both France and Spain. The inhabitants of the Great Republic take pride in the thought that their ancestors, the colonists, achieved their independence principally through their own courage and hardihood; but it is the opinion of many students of history that, had not France assisted with both men and money, the rebels would have been conquered and the leaders probably shot or hung. Indeed, it is probable that, had France not previously agreed to assist the rebels, they would not have inaugurated war to gain their independence.

The terms of the treaty of peace between Great Britain and the United States at the conclusion of the revolution precipitated anew the discussion over boundary rights and the navigation of the Mississippi. The inhabitants of Louisiana were greatly concerned in this discussion, and from the start, as they had done before, took deep interest in the outcome. The preliminary treaty between the two countries was signed at Paris November 30, 1782, and in the caption it was stated that such treaty "is not to be concluded until terms of a peace shall be agreed upon between Great Britain and France and his Britannic Majesty shall be ready to conclude such treaty accordingly."* This proviso was due to the agreement to that effect between France and the United States in their treaty of February 6, 1778 (see supra). A preliminary treaty of peace having been agreed to at Versailles January 20, 1783, between France and Great Britain, the congress of the United States was at liberty under this proviso to conclude and ratify the definitive treaty with Great Britain which was accordingly done, on September 3, 1783.

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† Diplomatic Correspondence, secret.

* Treaties of the United States.

At the date of signing the preliminary treaty of peace between the United States and Great Britain, a separate article agreed upon was as follows: "It is hereby understood and agreed that in case Great Britain, at the conclusion of the present war, shall recover, or be put in possession of, West Florida, the line of north boundary between the said Province and the United States shall be a line drawn from the mouth of the river Yassous (Yazoo), where it unites with the Mississippi, due east to the river Apalachicola."*

It was provided in the treaty that the southern boundary of the United States should be "a line to be drawn due east from the determination of the line last mentioned (in the middle of the Mississippi river and at the northernmost part of the thirty-first degree of north latitude), in the latitude of thirty-one degrees north of the equator, to the middle of the river Apalachicola or Catahouche, thence along the middle thereof to its junction with the Flint river; thence straight to the head of St. Mary's river; and thence down along the middle of St. Mary's river to the Atlantic ocean."

Article VIII of the definitive treaty was as follows: "The navigation of the river Mississippi, from its source to the ocean, shall forever remain free and open to the subjects of Great Britain and the citizens of the United States."

The treaty of January 20, 1783, between Spain and Great Britain, not resulting in the acquisition of West Florida by the latter, as she had hoped, rendered null and void the separate article agreed upon between the United States and Great Britain (see supra). At the conclusion of the revolution, Spain was in possession of West Florida and Great Britain of East Florida. In the preliminary articles of peace between those two countries it was provided that, "His Britannic Majesty shall cede to his Catholic Majesty East Florida, and His Catholic Majesty shall keep West Florida." But in the definitive treaty of September 3, 1783, between those two countries the following language was used: "His Britannic Majesty likewise cedes and guarantees, in full right to his Catholic Majesty East Florida as also West Florida." In neither the preliminary nor the definitive treaty between Spain and Great Britain was anything said concerning the right to navigate the Mississippi or the boundary between the United States and West Florida.

The ink had scarcely become dry on the treaties between England and the United States and France on one side and England

*Treaties of the United States.

and Spain on the other, both concluded September 3, 1783, and ratified January 14, 1784, ere the question of navigating the Mississippi and of the boundaries between Spain and the United States came up for settlement. In a letter dated February 19, 1783, from the Marquis de Lafayette to the Count de Florida Blanca, the former asked permission to lay before congress the following as having been the language of a previous date between the two: "With respect to the limits, his Catholic Majesty had adopted those that are determined by the preliminaries of the 30th of November between the United States and the court of London. The fear of raising an object of dissension is the only objection the King has to the free navigation of the Mississippi." To this the Count replied of February 22, as follows: "You have perfectly well understood whatever I have had the honor to communicate to you with respect to our disposition towards the United States. I shall only add, that, although it is his Majesty's intention to abide for the present by the limits established by the treaty of the 30th of November, 1782, between the English and the Americans, the King intends to inform himself particularly whether it can be in any ways inconvenient or prejudicial to settle that affair amicably with the United States." Later it was declared that the marquis had misunderstood the court. No doubt the marquis was correct in his recollection, but the views of the Spanish ministry had undergone a great change.*

On the 3d of June, 1784, congress passed the following: "*Resolved*, That the ministers plenipotentiary of the United States, for negotiating commercial treaties with foreign powers, be and they are hereby instructed, in any negotiations they may enter upon with the court of Spain, not to relinquish or cede, in any event whatsoever, the right of the citizens of these United States, to the free navigation of the river Mississippi, from its source to the ocean."† In a letter dated December 19, 1784, M. Marbois chargé d'affairs of France, communicated to congress the contents of a letter from Francisco Rendon, a Spanish gentleman, who had acted as chargé for Spain, residing in Philadelphia, in which the latter stated that the king of Spain "is persuaded that congress will admit the justice of a claim, which is founded on all the rights which an entire conquest and an uninterrupted possession can give to any power; and that they (congress) will agree that the cession of the navigation of the Mississippi, made by the King of

* Diplomatic Correspondence.

† Diplomatic Correspondence.

Great Britain to the United States in the treaty of 1783, can have no real force, unless the Catholic King, my master, to whom the navigation of that river belongs, shall think proper to ratify it." This letter from Mr. Rendon embraced the substance of instructions to him from Don Joseph de Galvez, Spanish minister to the department of the Indies, dated June 26, 1784, the following language being used: "Give the States and congress to understand that they are not to expose to process and confiscation the vessels which they destine to carry on commerce on the river Mississippi, inasmuch as a treaty concluded between the United States and England, in which the former ground their pretentions to the navigation of that river, could not fix limits in a territory which that power did not possess, the two borders of the river being already conquered and possessed by our arms the day the treaty was made, namely, the 30th of November, 1782."

In response to the above communication, congress, on December 15, 1784, passed the following resolution: "That congress have a high confidence in the justice of his Catholic Majesty, and rely that he will submit the mutual rights of Spain and the United States of America to amicable discussion without adopting measures which may prejudice those rights;" and on December 17, it was further resolved, "That it is necessary a minister be commissioned to represent the United States at the court of Madrid, for the purpose of adjusting the interfering claims of the two nations respecting the navigation of the Mississippi."* Spain objected to the assumption by which Great Britain and the United States, in their treaty of 1783, provided for the navigation of the river Mississippi (vide, supra, Article VIII). Hence the protests above mentioned.

It was learned from Oliver Pollock, in a letter to Mr. Jay, dated June 3, 1785, (and previously intimated in his letter of February 10, 1785,) that General Galvez and Don Diego de Gardoqui, chargé d'affairs to the United States on his way there, had intimated in several conferences at Havana, the right of Spain by reason of conquest, not only to the territorial limits claimed by her, but to the exclusive right to navigate the Mississippi as well, but were doubtful of the admissibility of her claim by the United States. General Galvez stated at these conferences that the Natchez settlement fell within the limits of Florida, and that, therefore, Great Britain had no right to cede such region to the United States, nor to grant the latter the right to navigate the

* Diplomatic Correspondence.

Mississippi. He said that, after 1763, the inhabitants petitioned Great Britain to be attached to West Florida, owing to the inconvenience of their having to attend to the seat of the Georgia government; and that this petition had been granted and the limits of West Florida fixed at the mouth of the river "Yassaw" (Yazoo). He further maintained that Spain had strong claims to the territory east of the Mississippi above the mouth of the Yazoo; that Captain Don Baltazar Devillia (or de Villers), a Spanish officer, had crossed the Mississippi river on November 22, 1780, at a place called the "English Arkensaws," about four hundred miles above Natchez and had "buried under ground in a tin box the colors of Spain as a symbol of his having taken possession of that part of the country for Spain."*

It was later maintained by Spain, that on the 2d of January, 1781, "a detachment of sixty five militiamen and sixty Indians of the nations Ottawa, Sotu and Pottawattomie, under the command of Don Eugenio Pierre, a captain of militia, accompanied by Don Carlos Tarjon, a sub-lieutenant of militia, by Don Louis Chevalier, a man well versed in the language of the Indians, and by their great chiefs Eletumo and Naquigen, marched from the town of St. Louis of the Ilionese (Illinois), and possessed themselves of the post of St. Joseph, which the English occupied, at two hundred and twenty leagues distance from that of the above mentioned St. Louis," suffering intensely from cold and hunger and exposed to attacks from savage Indians in the deep snow. The commander, by seasonable precautions, prevented a large body of Indians devoted to the British, from opposing the expedition. "They made prisoners of the few English they found in it, the others having perhaps retired in consequence of some prior notice. Don Eugenio Pierre took possession in the name of the king, of that place and its dependencies, and of the river of the Illinois; in consequence whereof, the standard of His Majesty was there displayed during the whole time. He took the English one and delivered it on his arrival at St. Louis to Don Francisco Cruyat, the commandant at that post. The destruction of the magazine of provisions and goods which the English had there (the greater part of which was divided among our Indians and those who lived at St. Joseph, as had been offered them in case they did not oppose our troops), was not the only advantage resulting from the success of the expedition, for thereby it became impossible for the English to execute their plan of attacking the fort at St. Louis

* American State Papers.

of the Illinois, and it also served to intimidate the savage nation, and oblige them to propose to remain neutral which they do at present. When you consider the ostensible object of this expedition, the distance of it, the formalities with which the place, the country, and the river were taken possession of in the name of his Catholic Majesty, I am persuaded it will not be necessary for me to swell this letter with remarks that would occur to a reader of far less penetration than yourself."* These conquests, together with the settlements of Natchez and, later, of Walnut Hills (now Vicksburg), and the Chickasaw Bluffs (now, Memphis), were the grounds for the Spanish claim to the territory east of the Mississippi and north of the thirty-first degree of north latitude. Opposed to this claim was the conquest of the western country by George Rogers Clark during the revolution.

To John Jay, a secretary to the United States of America for the department of foreign affairs, were assigned the powers of concluding with Don Diego de Gardoqui, the *encargado de negocios* of the king of Spain, "whatever articles, compacts and conventions may be necessary for establishing and fixing the boundaries between the territories of the United States and those of his Catholic Majesty, and for promoting the general harmony and mutual interests of the two nations." On August 25, 1785, this was modified so as "particularly to stipulate the right of the United States to their territorial bounds and the free navigation of the Mississippi from the source to the ocean as established in the treaties with Great Britain," and he was forbidden to sign any treaty or compact until the same should have been previously submitted to congress:†

On September 23, 1785, Mr. Gardoqui complained that in certain domestic deliberations by the State of Georgia, the frontier limits of that state had been extended over some of the territory recently conquered by Spain from Great Britain and specified that Thomas Green "clandestinely and with a considerable number of families and slaves" had gone to the Spanish fort at Natchez, that they had appointed Mr. Green governor, but had been refused recognition by the Spanish commandant there. Congress was asked to remedy the difficulty. In response to this request, congress enacted "that although they conceive that they have an undoubted right to all the territory within the limits specified in the definitive articles of peace and friendship between the crown

* American State Papers.
† Proceedings of Congress.

of Great Britain and these United States, yet they view with real concern the unaccountable attempt of any individual of these States" to disturb the peace between the two nations, and that the delegates of the State of Georgia should disavow the appointment of Thomas Green as governor. On February 25, 1786, John Jay informed congress that a boat which had been sent down the Mississippi by a Mr. A. Fowler, had been stopped at Natchez by the Spaniards, and said "that there is good reason to believe that the king of Spain is resolved, if possible, to exclude all nations from the navigation of that part of the Mississippi which runs between his territories." He further observed that if the United States maintained the navigation of that river to their citizens, it would have to be by arms or by treaty.

On May 25, 1786, Mr. Gardoqui formally asked that congress should consider the respective claims of the two countries over the western boundaries and to the navigation of the Mississippi. He intimated that, by reason of the conquest of Captain de Villers in 1780, Spain claimed the country east of the Mississippi and above Florida. The appointment of a commission to settle the differences having been suggested by Mr. Jay, congress "resolved, that unless all questions relative to the boundaries of Florida shall (as they hope will be the case) be settled by mutual agreement, the United States will cheerfully consent, and be ready to refer the same to the ultimate decision of three or more impartial commissioners." Mr. Jay having been called before congress August 3, 1786, to communicate the progress of negotiations between himself and Mr. Gardoqui, informed that body that the questions of territorial limits and of navigating the Mississippi were the only two obstacles that divided them; that Spain was then holding the territory she claimed and preventing American citizens from navigating the Mississippi; and that she was not likely to yield these claims without war.*

On August 29, 1786, congress repealed their instructions of August 25, 1785, to Mr. Jay, concerning the boundaries and the navigation of the Mississippi. It having been shown that the Spanish authorities down the Mississippi had stopped all Americans from passing with their boat loads below Natchez, notably in the cases of A. Fowler and Thomas Amis, both of whom had lost their boats and loads, Mr. Jay made the following recommendation to congress: "It is well known that Spain will not permit our people to navigate that part of the river which runs

* American State Papers.

through their countries, and such of them as make the experiment must expect consequences similar to those which Amis experienced. Your secretary is convinced that the United States have good right to navigate the river, from its source to and through its mouth; and unless an accommodation should take place, that the dignity of the United States, and their duty to assert and maintain their rights, will render it proper for them to present a memorial and remonstrance to His Catholic Majesty, insisting on their right, complaining of its being violated, and demanding in a temperate, inoffensive, but, at the same time, in a firm and decided manner, that his Majesty do cease in future, to hinder their citizens from freely navigating that river through the part of its course in question. Your secretary is further of opinion, that in case of refusal, it will be proper for the United States to declare war against Spain. There being no respectable middle way between peace and war, it will be expedient to prepare without delay for the one or the other."

It has been asserted that congress at this time actually passed an act authorizing Mr. Jay to propose to the Spanish minister the suspension of American commerce on the Mississippi river for the period of twenty-five years; but there seems to be no record that such an act was really passed. Congress deliberated on such a bill for many months; and no doubt Mr. Jay was instructed to informally sound the Spanish minister on the subject. But the refusal of the latter to entertain the proposition and the violent outbreaks throughout the western country in opposition to such a ruinous measure, so violent in fact as to threaten the stability of the Union, were sufficient to prevent the actual passage of the bill.

In the meantime events of great import were transpiring in the west. The extraordinary emigration into the Ohio valley immediately succeeding the revolution, had rendered an outlet for the settlers' products down the Mississippi absolutely necessary; but as this privilege was denied them and as it was reported that congress would likely agree that the navigation of that river should be suspended for the period of twenty-five years, as had been seriously considered,* they inaugurated various movements calculated to enforce their right to such free navigation, regardless of what congress might think of their course. Gen. George Rogers Clark, as a measure of retaliation against the Spaniards, and at the instigation of Great Britain, seized what Spanish property there was at the post of St. Vincennes, having under his command the troops

*American State Papers.

stationed there. Under his orders the same action was taken against the Spaniards on the Illinois. He had also recruited a considerable force of militia in the western country for the real purpose of assisting Great Britain, but for the avowed purpose of resisting Spanish pretentions and opening the Mississippi to the western country. Thomas Green and others at the Falls of the Ohio (Louisville), and in the State of Frankland (on the Cumberland river), had likewise armed and organized a considerable body of militia with the same object. One gentleman at the Falls of the Ohio, on December 4, 1786, wrote to New England:*

"We can raise twenty thousand troops this side the Alleghany and Appalachian mountains; and the annual increase of them by emigration from other parts is from two to four thousand. We have taken all the goods belonging to the Spanish merchants of Post Vincennes and the Illinois, and are determined they shall not trade up the river, provided they will not let us trade down it. Preparations are now making here (if necessary) to drive the Spaniards from their settlements at the mouth of the Mississippi. In case we are not countenanced and succored by the United States (if we need it) our allegiance will be thrown off, and some other power applied to. Great Britain stands ready with open arms to receive and support us. They have already offered to open their resources for our supplies. When once reunited to them "farewell, a long farewell, to all your boasted greatness." The province of Canada and the inhabitants of these waters, of themselves, in time, will be able to conquer you. You (meaning the people east of the Alleghanies) are as ignorant of this country as Great Britain was of America." He further said, "The late commercial treaty with Spain (it was reported in the west that such a treaty had been concluded) in shutting up, as it is said, the navigation of the Mississippi, for the term of twenty-five years, has given this western country a universal shock, and struck its inhabitants with an amazement. To sell us and make us vassals of the merciless Spaniards, is a grievance not to be borne." And speaking of New Orleans he said, "We know by woeful experience that it is in their power, when once we are there, to take our produce at any price they please. Large quantities of flour, tobacco, meal, etc., have been taken there the last summer and mostly confiscated; those who had permits from their governor was obliged to sell at a price he was pleased to state or subject themselves to lose the whole. Men of large property are

*American State Papers.

already ruined by their policy. The quantities of produce we now have on hand are enormous. Flour and pork are now selling here at twelve shillings the hundred, beef in proportion; any quantities of Indian corn can be had at nine pence per bushel."

It was claimed in March, 1787, by John Sullivan, late in the continental service, in a letter to Mr. Gardoqui, that "from the Natchez to the Kaskaskies, from Pittsburg to St. Mary's river, they are prepared to pour forth with the greatest ease fifty thousand veterans in arms in defense of their commercial rights throughout the navigable rivers of the southern part of this empire. . . . May it please your Excellency, the States of Georgia, Franklin and Kentucky federated; the counties of Bourbon, etc., on the Natchez, the settlements on Cumberland, Kaskaskies and the Wabash; and the governments of Pittsburg, Westmoreland, etc., abound with the seeds of war; nor will any obstruction from New Orleans to the Balise impede the overwhelming inundation preparing to pour down along the waters of the Mississippi into the bay of Mexico. The torrent will be irresistible. . . . The permission of congress will not be solicited on this occasion. In congress this people are not represented." How true the boasts of Mr. Sullivan were must be, to some extent, a matter of conjecture. But it is certain that all of the western settlers were determined to have the right of freely navigating the Mississippi, and were on the point of joining Great Britain in a war against New Orleans, Natchez, etc., to gain it. While the actual conditions were bad enough, the western people were particularly incensed by the report that congress had relinquished the right as above stated, to navigate the Mississippi for twenty-five years. This course had been seriously and elaborately considered by congress, but had been rejected.

Steps were promptly taken by congress to thwart any armed movement against New Orleans or Natchez, and the western settlers were assured that their rights to navigate the Mississippi would be protected. The following resolution was passed September 16, 1788: "That the free navigation of the river Mississippi is a clear and essential right of the United States, and that the same ought to be considered and supported as such; that the said report (to relinquish the claim to navigate the Mississippi) not being founded on fact, the delegates be at liberty to communicate all such circumstances as may be necessary to contradict the same; and that no further progress be made in the negotiations with Spain by the secretary of foreign affairs but that the subject to which they relate be referred to the federal government which is

to assemble in March next."* The proceedings over the adoption of the Constitution of the United States postponed for some time further consideration of the necessities of the western people.

The secretary of state, Mr. Jefferson, informed congress, on December 22, 1791, that a commissioner of Spain had signified that his king was willing to consider the question of the Americans' right to navigate the Mississippi and their desire for a port thereon. It was suggested that the negotiations be held at Madrid.** President Washington appointed William Carmichael and William Short commissioners plenipotentiary "for negotiating and concluding a convention or treaty concerning the navigation of the river Mississippi by the citizens of the United States." This proceeding was ratified by congress. In March, 1792, the powers of the commissioners were extended so as to embrace all the measures of a general treaty such as had been previously discussed with Mr. Gardoqui.

It should be noticed that, at his date, Spain no longer made claims to the Upper Mississippi valley to the eastward of the stream; but she still claimed and occupied Natchez and the post at Walnut Hills (Vicksburg). The questions of boundary and of navigation were still to be settled. As a measure of precaution against any possible descent of the western settlers upon Natchez or New Orleans, she had strengthened all her posts on the Mississippi, having sent fifteen hundred soldiers to New Orleans doubtless for that purpose. Mr. Jefferson said to Mr. Carmichael in a letter dated August 2, 1790, "I say nothing of the claims of Spain to our territory north of the thirty-first degree and east of the Mississippi; they never merited the respect of an answer; and you know it has been admitted at Madrid that they were not to be maintained."† Thus the contentions had settled down to the questions of the northern boundary of West Florida and the navigation of the Mississippi. Spain did not dispute the right of the United States to the left bank of the river above the true boundary. The settlement of these important questions was again postponed by the wars in Europe.

In March, 1792, Mr. Jefferson prepared instructions for the American commissioners, appointed to treat with Spain, from which the following extracts explain themselves:

"The southern boundary of Georgia, the only one now in question, was established originally at the thirty-first degree of lati-

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* Proceedings of Congress.
** Writings of Thomas Jefferson.
† American State Papers.

tude from the Apalachicola westwardly, and the western boundary, originally the Pacific ocean, was, by the treaty of Paris, reduced to the middle of the Mississippi. In the course of the revolution we were joined by France as an ally, and by Spain and Holland as associates; having a common enemy, each sought that common enemy wherever they could find him. France, on our invitation, landed a large army within our territories, continued it with us two years, and aided us in recovering sundry places from the possession of the enemy. But she did not pretend to keep possession of the places rescued. Spain entered into the remote western part of our territory, dislodged the common enemy from several posts they held therein to the annoyance of Spain; and perhaps thought it necessary to remain in some of them, as the only means of preventing their return. We in like manner dislodged them from several posts in the same western territory, to-wit: Vincennes, Cahokia, Kaskaskia, etc., rescued the inhabitants, and retained constantly afterwards both them and the territory under our possession and government.* At the conclusion of the war, Great Britain, on the 30th of November, 1782, by treaty acknowledged our independence and our boundary, to-wit: the Mississippi to the west and the completion of the thirty-first degree, etc., to the south. In her treaty with Spain, concluded seven weeks afterward, to-wit: January 20, 1883, she ceded to her the two Floridas, which had been defined in the proclamation of 1763 and Minorca; and by the eighth article of the treaty, Spain agreed to restore, without compensation, all the territories conquered by her and not included in the treaty, either under the head of cessions or restitutions, that is to say all except Minorca and the Floridas. According to this stipulation Spain was expressly bound to have delivered up the possession she had taken within the limits of Georgia, to Great Britain, if they were conquests on Great Britain, who was to deliver them over to the United States; or rather, she should have delivered them to the United States themselves, as standing *quoad hoc* in the place of Great Britain. And she was bound by natural right to deliver them to the same United States on a much stronger ground, as the real and only proprietors of those places which she had taken possession of in a moment of danger, without having had any cause of war with the United States, to whom they belonged, and without having declared any; but on the contrary, conducting herself in other respects as a friend and associate.

* American State Papers.

"It is an established principle that conquest gives only an *inchoate* right, which does not become perfect till confirmed by the treaty of peace, and by a renunciation or abandonment by the former proprietor. Had Great Britain been the former proprietor, she was so far from confirming to Spain the right to the territory of Georgia, invaded by Spain, that she expressly relinquished to the United States any right that might remain in her; and afterward completed that relinquishment by procuring and consolidating with it the agreement of Spain herself to restore such territory without compensation. It is still more palpable that a war existing between two nations, as Spain and Great Britain, could give to neither the right to seize and appropriate the territory of a third, which is even neutral, much less which is an associate in the war, as the United States were with Spain. On the conclusion of the general peace the United States lost no time in requiring from Spain an evacuation of their territory. This has been hitherto delayed by means we need not explain to that court, but which have been equally contrary to our right and to our consent." And in regard to the secret article between the United States and Great Britain, the commissioners were instructed to put the case hypothetically, thus: "Suppose that the United States, exhausted by a bloody and expensive war with Great Britain, might have been willing to have purchased peace by relinquishing, under a particular contingency, a small part of their territory, it does not follow that the same United States, recruited and better organized, must relinquish the same territory to Spain without striking a blow."

The argument of Mr. Jefferson regarding the boundary between West Florida and the United States rested upon three principal grounds: 1. The charter of Carolina to the lords proprietors in 1663 which fixed it on the thirty-first degree; 2. The proclamation of the British King in 1763-4 (see supra); 3. The treaties of November 30, 1782, and September 3, 1783, "repeating and confirming these ancient boundaries." His argument on the right of the United States to navigate the Mississippi was based upon the following grounds: 1. The treaty of Paris of 1763; 2. The Revolution treaty 1782-3; 3. The law of nature and nations.* He said:

"The war of 1755–1763 was carried on jointly by Great Britain and the thirteen colonies, now the United States of America,

* American State Papers.

against France and Spain. At the peace which was negotiated by our common magistrate, a right was secured to the subjects of Great Britain (the common designation of all those under his government) to navigate the Mississippi in its whole breadth and length, from its source to the sea, and expressly that part which is between the island of New Orleans and the right bank of the river, as well as the passage both in and out of its mouth; and that the vessels should not be stopped, visited, or subjected to the payment of any duty whatsoever. These are the words of the treaty, article VII. Florida was at the same time ceded by Spain, and its extent westwardly was fixed to the lakes Pontchartrain and Maurepas and the river Mississippi; and Spain received soon after from France a cession of the island of New Orleans, and all the country she held westward of the Mississippi, subject of course to our right of navigating between that country and the island previously granted to us by France. This right was not parceled out to us in severalty, that is to say, to each the exclusive navigation of so much of the river as was adjacent to our several shores—in which way it would have been useless to all—but it was placed on that footing on which alone it could be worth anything, to-wit: As a right to all to navigate the whole length of the river in common. The import of the terms and the reason of the thing prove it was a right of common in the whole, and not a several right to each of a particular part. To which may be added the evidence of the stipulation itself, that we should navigate between New Orleans and the western bank, which, being adjacent to none of our states, could be held by us only as a right of common. Such was the nature of our right to navigate the Mississippi, as far as established by the treaty of Paris.

"In the course of the Revolutionary war, in which the thirteen colonies, Spain and France were opposed to Great Britain, Spain took possession of several posts held by the British in Florida. It is unnecessary to inquire whether the possession of half a dozen posts scattered through a country of seven or eight hundred miles in extent, could be considered as the possession and conquest of that country. If it was, it gave but an *inchoate* right, as was before explained, which could not be perfected but by the relinquishment of the former possession at the close of the war; but certainly it could not be considered as a conquest *of the river*, even against Great Britain, since the possession of the shores, to-wit: of the island of New Orleans on the one side, and Louisiana on the other, having undergone no change, the right in the water would remain the same, if considered only in relation to them; and if

considered as a distinct right, independent of the shores, then no naval victories obtained by Spain over Great Britain in the course of the war, gave her the color of conquest over any water which the British fleet could enter. Still less can she be considered as having conquered the river as against the United States, with whom she was not at war. We had a common right of navigation in the part of the river between Florida, the island of New Orleans, and the western bank, and nothing which passed between Spain and Great Britain, either during the war or at its conclusion, could lessen that right. Accordingly, at the treaty of November, 1782, Great Britain confirmed the rights of the United States to the navigation of the river, from its source to its mouth, and in January, 1783, completed the right of Spain to the territory of Florida, by an absolute relinquishment of all her rights in it. This relinquishment could not include the navigation held by the United States in their own right, because this right existed in themselves only, and was not in Great Britain. If it added anything to the rights of Spain respecting the river between the eastern and western banks, it could only be that portion of right which Great Britain had retained to herself in the treaty with the United States, held seven weeks before, to-wit, a right of using it in common with the United States. So that as by the treaty of 1763, the United States had obtained a common right to navigate the whole river from its source to its mouth, so by the treaty of 1782 that common right was confirmed to them by the only power which could pretend claims against them, founded on the state of war; nor has that common right been transferred to Spain by either conquest or cession."

But Mr. Jefferson regarded the strongest argument of the United States to the right of navigating the Mississippi to rest on the law of nature and nations, and proceeded to cite numerous cases from Roman and more recent law. His position seems unassailable so far as the questions of boundary and right to navigate the Mississippi are concerned.*

The views of Spain at this time regarding these questions are contained in the letter of April 18, 1793, from William Carmichael and William Short to Mr. Jefferson. Mr. Gardoqui, the commissioner on the part of Spain, according to the American commissioners, "discovered evident signs of impatience under this statement (the argument of Mr. Jefferson), and much surprise either feigned or real at it. He assured us that no con-

* American State Papers; Foreign Relations, Vol. I.

sideration whatever would ever induce his Majesty to acknowledge a right in us to this navigation; and he seemed to consider our claim to the limits under the treaty with England as extravagant and unwarrantable; regarding this treaty as an agreement made between two people to dispose of the property of a third."*

He maintained substantially that the argument regarding natural law was deserving of no attention, having never yet bound a power further than suited its convenience; that the treaties cited by Mr. Jefferson did not give the United States the right to the navigation, because Spain was not a party thereto; that he would never consent to advise His Majesty to acknowledge the right of the United States to navigate the whole course of the Mississippi; that Spain was entitled by conquest to the territory claimed; that as Spain had not acknowledged the independence of the United States, she had a right to make those conquests; that the statements of the Marquis de Lafayette were misrepresentations; that the questions of boundary and navigation were much less important than the United States made them; that the admission of foreigners into the Spanish colonial possessions was an innovation; that opening the navigation meant the smuggling of goods into Louisiana through the states; that the people of the Atlantic states were opposed to the navigation in order to have the products of the West brought there; that the people of the West regarded their adhesion to the Union as visionary; and that the United States did not really want the limits and navigation asked for.

Again there was a delay, and in the meantime the discontent grew in the West, the intrigues of Mr. Genet against Louisiana were disclosed, and the contentions over the treatment of the Indians by Spain and the United States were continued. The American commissioners said on May 5, 1793, "A few ships of the line would have more weight in securing peaceably the territorial rights of the United States and those with respect to the Mississippi, than all the most unanswerable arguments and incontestible proofs that could be adduced in support thereof." The European war was largely the cause of the delay, but the commissioners of the two countries seemed no nearer together than they had been ten years before.

On June 2, 1793, Mr. Jefferson wrote to Mr. Madison, "There is, too, at this time, a lowering disposition perceivable both in England and Spain. The former keeps herself aloof and in a

*American State Papers: Foreign Relations, Vol. I.

state of incommunication with us, except in the way of demand. The latter had not begun auspiciously with C. and S. (Carmichael and Short) at Madrid and has lately sent fifteen hundred men to New Orleans and greatly strengthened her posts on the Mississippi." On the 23d of the same month he again wrote, "Spain is unquestionably picking a quarrel with us; a series of letters from her commissioners here prove it. We are sending a courier to Madrid. The inevitableness of war with the Creeks and the probability, I might say certainty, of it with Spain (for there is not one of us who doubts it), will certainly occasion your convocation, at what time I cannot exactly say, but you should be prepared for this important change in the state of things."* Even while Messrs. Carmichael and Short were endeavoring to their utmost at Madrid to secure a treaty with Spain, that country was extending her settlements into the disputed territory along the Mississippi. On the contrary, the United States had prevented with a strong show of force the settlement of a large colony of Americans at the Walnut Hills (Vicksburg).

In June, 1793, the American commissioners informed Mr. Jefferson that Spain regarded the relinquishment of the limits and the navigation "as a commencement of the loss of their American commerce and territorial possessions." In June, 1793, Louisiana having been deprived of its commerce with France by reason of the war in Europe, Spain adopted an ordinance extending and improving the commerce of that colony. In November, 1794, President Washington nominated Thomas Pinckney as envoy extraordinary to assist the American minister resident at Madrid to negotiate the treaty with Spain. There was much uneasiness in the western country in 1793 and 1794 under the attempts of Mr. Genet to raise a force there to descend upon New Orleans. Congress took effective steps to thwart any such movement, and reassured the western settlers that negotiations looking to their right to navigate the Mississippi were under way.†

On December 7, 1793, Messrs. Carmichael and Short at Madrid wrote to the Spanish minister, the Duke de la Alcudia, as follows: "When your Excellency shall see from it that those limits were established so long ago as the year 1763; that the acts by which they were established and confirmed and pointed out, are lawful and indisputable; in fine, are as precise and as valid as those establishing the right of the United States to any other part of

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* Writings of Thomas Jefferson.

† Proceedings of Congress.

their territory; and that Spain has no title whatever to produce, no document of any kind giving even the color of a right to the territory claimed within the limits of the United States; we trust your Excellency will think it just that that uncertainty shall no longer remain. It cannot be unknown to your Excellency that the difficulties which have been raised as to the rights of the United States on the subject of limits and the navigation of the Mississippi, have retarded the negotiations set on foot. After all that had passed between the two countries relative thereto, the United States were far from expecting these difficulties would have existed at the opening of our negotiation. We have hoped that time and a more accurate examination of the subject would remove them. We now present the claims of the United States in these subjects in such a form, exhibiting the titles from which they are derived, that we hope they will appear rigorously just."*

Soon after the arrival of Mr. Pinckney in Spain in June, 1795, he was informed that it was the wish of the Spanish monarch to form a triple alliance between France, Spain and the United States; but this proposition was diplomatically evaded. When the Duke de la Alcudia was told that the United States, in the pending negotiations, could not guarantee the Spanish possessions in America, he "appeared much mortified." Early in August, 1795, immediately after the treaty between France and Spain was concluded, the Spanish minister sent word to the American commissioners that their business "should be very speedily settled to their satisfaction, as His Majesty was determined to sacrifice something of what he considered as his right to testify his good will to the United States."* In the conferences Mr. Pinckney argued that the suspension of the navigation of the Mississippi from 1783 to 1795 had occasioned great loss to the people in the western part of the United States, and that as a just measure of compensation therefor Spain should now grant them a depot at some convenient point down the Mississippi, and mentioned New Orleans as its location.

There is no way of knowing, except from the various documents of that time, what Spain expected to gain by her contentions over the limits and the navigation. Mr. Carmichael while in Madrid reported that Spain at the conclusion of the revolution expected to abide by the limits and navigation established by the treaty of November 30, 1782, between Great Britain and the

*Diplomatic Correspondence.

United States; but that France had persuaded her to extend her claims.* That statement is supported by the fact that France sustained such claims of Spain from 1778, and earlier, even until after the cession of Louisiana by France to the United States. So far as can be learned from existing sources of information, no stronger arguments were adduced by Spain in support of her contentions than here presented. The arguments of Mr. Jefferson and of his successor, Mr. Randolph, and of Mr. Pinckney, the envoy extraordinary of the United States, were never answered by Spain. It was noted at the time by Mr. Pinckney that the concluding arguments of Mr. Jefferson and himself were studiously, yet artfully, evaded by the Spanish ministry. The American position was absolutely sustained by the facts, so far as the western and the southern boundaries and the navigation of the Mississippi were concerned.

The long delayed treaty between Spain and the United States was finally concluded October 27, 1795. The following extracts therefrom explain themselves.

"Article II. To prevent all disputes on the subject of the boundaries which separate the territories of the two high contracting parties, it is hereby declared and agreed as follows, to-wit: The southern boundary of the United States, which divides their territory from the Spanish colonies of East and West Florida, shall be designated by a line beginning on the river Mississippi, at the northernmost part of the thirty-first degree of latitude north of the equator, which from thence shall be drawn due east to the middle of the river Apalachicola, or Catahouche, thence along the middle thereof to its junction with the Flint; thence straight to the head of St. Mary's river, and thence down the middle thereof to the Atlantic ocean.

"Article III. In order to carry the preceding article into effect, one commissioner and one surveyor shall be appointed by each of the contracting parties, who shall meet at the Natchez, on the left side of the Mississippi, before the expiration of six months from the ratification of this convention, and they shall proceed to run and mark this boundary according to the stipulations of the said article (Article II above). They shall make plats and keep journals of their proceedings, which shall be considered as part of this convention, and shall have the same force as if they were inserted therein. And if on any account it shall be found necessary that the said commissioners and surveyors should be accom-

* Diplomatic Correspondence, Secret.

panied by guards, they shall be furnished in equal proportions by the commanding officer of His Majesty's troops in the two Floridas, and the commanding officer of the troops of the United States in the southwestern territory, who shall act by common consent and amicably, as well with respect to this point as to the furnishing of provisions and instruments, and making every other arrangement which may be necessary or useful for the execution of this article.

"Article IV. It is likewise agreed that the western boundary of the United States, which separates them from the Spanish colony of Louisiana, is in the middle of the channel or bed of the river Mississippi, from the northern boundary of the said states to the completion of the thirty-first degree of latitude north of the equator. And his Catholic Majesty has likewise agreed that the navigation of the said river, in its whole breadth from its source to the ocean, shall be free only to his subjects and the citizens of the United States, unless he should extend this privilege to the subjects of other powers by special convention.

"Article XXII. . . . And in consequence of the stipulations contained in the IVth article, his Catholic Majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their merchandise and effects in the port of New Orleans, and to export them from thence without paying any other duty than a fair price for the hire of the stores; and his Majesty promises either to continue this permission, if he finds during that time that it is not prejudicial to the interest of Spain, or if he should not agree to continue it there, he will assign to them on another part of the banks of the Mississippi an equivalent establishment.*

The conclusion of the treaty between Spain and the United States in October, 1795, when it became known in the western country, occasioned the most unbounded satisfaction. The feelings of relief, unless the situation of that day be well understood, cannot be realized now. Immediately thereafter, the products of the West sought the port of New Orleans, and the rivers became joyful with the shouts of the elated boatmen. The newspapers of the Atlantic cities were far from being enthusiastic over the treaty, because it meant the loss to the East of nearly all of the western trade.† Neither was the news relished at New Orleans, whose people had so often been bandied about from one European nation to another, because the aggressive commercial enterprise of

* Treaties of the United States.
† Pittsburg Gazette.

the Americans, it was realized, foreshadowed their absorption of the river traffic.

In 1797, the Spanish ministry presented strong protests against many of the provisions of the treaty of 1794, concluded between Great Britain and the United States, particularly in regard to the specifications concerning contraband, to the violation of the maritime principle that "free ships make free goods," and to the confirmation of the article in the treaty of 1783, by which the United States recognized the right of Great Britain to navigate the Mississippi. The latter was particularly objectionable, because, in the estimation of Spain, the United States had been guilty of duplicity in the treaty of 1795, by which Spain was not only humiliated, but was made to suffer serious injury. The "explanatory articles" of May 4, 1796, between the United States and Great Britain, were included in the protests. The Spanish view was presented by Don Carlos de Yrujo, Spanish minister to America, as follows:

"By the sixth article of the preliminary treaty made on the 3d November, 1763, between France and Great Britain, and by the definitive treaty signed on the 10th of February, 1763, it is stipulated that all that part of Louisiana situated on the east of the Mississippi, excepting New Orleans and its dependencies, should belong to Great Britain. By the 8th article of the provisional treaty concluded between the United States of America and Great Britain on the 30th of November, 1782, and the definitive treaty signed on the 3d of September, 1783, it is stated, that the navigation of the Mississippi, from its source to the ocean, shall forever remain and be free to the subjects of Great Britain and the citizens of the United States. By the preliminary articles of the treaty concluded between Spain and England, and the definitive treaty signed on the 3d of September, 1783, Great Britain ceded to Spain all East and West Florida, which two provinces were the only territory that that nation had remaining in this part of the continent. In the 5th article, in which this cession is stipulated, not a single word is said relative to the navigation of the Mjssissippi, nor do the other articles say anything on the subject. When England signed these preliminary articles with the United States of America in 1782, Great Britain *still held* all the right to East and West Florida, because *then* she had not ceded *forever* those provinces to Spain, as is proved afterward by the treaty of 1783, and without the least mention therein of the Mississippi. Therefore, England, having ceded East and West Florida in 1783, and not having reserved the

right to the navigation of the Mississippi, of course lost it entirely when she made Spain mistress of the two banks. The only right which the United States had in the navigation of that river was founded on the stipulations derived from England; but having changed their political existence by the declaration of their independence, and having by this act separated their interests from those of Great Britain, the liberty of navigating the Mississippi did not follow to the United States, but by a special treaty which has just been concluded between Spain and this country. So far good; how can the United States without the consent of Spain, cede to England the right of navigating the Mississippi which is granted only to themselves? And in virtue of what privilege can the federal government give the navigation of this river to a nation who has renounced all her rights through the medium of solemn treaties, and who not only does not hold a single port, but also does not possess a single inch of land on its banks? This simple exposition, in conjunction with the opinion of all jurists, that the navigation of rivers naturally belongs to him who possesses the two banks, evidently manifests the injury done to the rights of Spain in the 3d article of the English treaty, and the explanatory article signed on the 4th of May, 1796."*

Mr. Pickering, secretary of state, fully and conclusively answers these points in his communication of May 17, 1797. He pointed out that Spain and not the United States had, by the treaty of 1795, excluded Great Britain from the navigation of the Mississippi,§ and that Spain had been aware of the treaty of 1794 between Great Britain and the United States before the treaty of 1795 between Spain and the United States was concluded, and hence there should be no complaint now.

In May, 1797, the Baron de Carondelet, governor of the province of Louisiana, dispatched Thomas Power to the Upper Mississippi country on an important mission in the interests of Spain.† He had learned that the Americans contemplated descending the river with troops to take possession of Natchez and the Walnut Hills in conformity to the treaty of 1795; and in order to prevent any clash of authority until the methods of evacuation by Spain had been determined upon, and until it should be learned whether the British expedition were likely to

* Diplomatic Correspondence.

§ This statement was correct. See the treaty.

† American State Papers.

descend the Mississippi to attack New Orleans, Mr. Power was required to secure, if possible, from General Wilkinson, the suspension of the march southward of the detachment under his command. He was further instructed to thoroughly sound the people of the Western States as to their designs against Louisiana, and in case it should be learned that a force of militia was being raised for such service to lose no time in putting the commandant at the Chickasaw Bluffs in possession of such information. He was also told to investigate the sentiments of the Western people as to their desire to separate themselves from the Union, and to hold out every inducement for them to adopt this course, relying upon the assistance of Spain in such a movement. Should such a sentiment be found to exist generally, they were to be told that the posts at Chickasaw Bluffs, Walnut Hills and Natchez were to be held by Spain for the mutual benefit of the Western people and the Spanish crown. The baron said, "If a hundred thousand dollars distributed in Kentucky could cause it to rise in insurrection, I am very certain that the minister in the present circumstances would sacrifice them with pleasure, and you may without exposing yourself too much promise them to those who enjoy the confidence of the people, with another equal sum to arm them in case of necessity and twenty pieces of field artillery. You will arrive without danger as bearer of a dispatch for the general where the army may be, whose force, discipline and dispositions you will examine with care; and you will endeavor to discover with your natural penetration the general's disposition. I doubt that a person of his character would prefer through vanity the advantage of commanding the army of the Atlantic States, to that of being the founder, the liberator, in fine, the Washington of the Western states; his part is as brilliant as it is easy; all eyes are drawn towards him; he possesses the confidence of his fellow-citizens and of the Kentucky volunteers; at the slightest movement the people will name him the general of the new republic; his reputation will raise an army for him and Spain as well as France will furnish him the means of paying it. On taking Fort Massac we will send him instantly arms and artillery, and Spain limiting herself to the possession of the forts of Natchez and Walnut Hills as far as Fort Confederation, will cede to the Western states all the eastern bank of the Ohio, which will form a very extensive and powerful republic, connected by its situation and by its interests with Spain. . . . Spain and France are enraged at the connections of the United States with Eng-

land; the army is weak and devoted to Wilkinson; the threats of congress authorize me to succor on the spot and openly the Western states; . . . nothing more will consequently be required but an instant of firmness and resolution to make the people of the West perfectly happy. If they suffer this instant to escape them, and if we should be forced to deliver up the posts, Kentucky and Tennessee, surrounded by the said posts and without communication with lower Louisiana, will ever remain under the oppression of the Atlantic States."

This mission was performed with fidelity by Mr. Power, but resulted in complete failure, as he himself stated upon his return. He reported that General Wilkinson would not now entertain the propositions of the Spanish authorities; that the inhabitants of the Western states, since the treaty of 1795, could not be shaken in their allegiance to the Federal Union; and that the army of the United States comprised about three thousand men."*

The concessions of the Spaniards at New Orleans to the settlers of the western country, particularly during the last decade of the eighteenth century, were continued partly with the expectation that they would eventually separate themselves from the Atlantic states and set up an independent government, in which event, as the Mississippi was the aortic artery of their commerce, they easily could be induced, in order to gain the permanent right to navigate that stream, to attach themselves to Louisiana.† In June, 1796, Baron de Carondelet issued orders for strengthening the post at Fort St. Ferdinand at the Chickasaw Bluffs (Memphis), and observed July 10 in a letter to the commanding officer there, "for the evacuation of that important post is not yet so certain as not to admit of doubt, at least so long as the savages remain attached to us. Besides, it is proper to keep in view that the neighboring states, that is to say, Kentucky and Tennessee, are interested that it (the post) should remain in our power, for political reasons which cannot be trusted to paper. You must, of consequence, keep them in those sentiments, by treating their inhabitants, to whom the liberty of the navigation is granted, with kindness and regard. Let the friendship of the Chickasaws and the satisfaction of the Americans who navigate the river be the basis of your conduct." He said September 12, in a letter to the same officer, "Should the court think proper, as may very well happen, not

* Statement of Mr. Power; American State Papers.

† See numerous letters; American State Papers.

to evacuate our posts on the Mississippi, I will dispatch a courier to you in all haste;" in order that the fort there might be repaired. He also promised, in such an event, to send reinforcements. He said, "You ought to make the latter (the inhabitants of Kentucky and Tennessee) understand that their natural interest leading them to separate some day (*un jour*) from the Atlantic states, the occupation of our posts on the Mississippi by the troops of the latter could not but be disastrous to them, since they would cut off all communication between them and us, from whom alone they could, in that case, hope to receive assistance."

In 1802, Daniel Clark, a prominent American resident of the western country, informed the president of the United States, that an agent from Kentucky had visited New Orleans, Natchez, etc., late in 1795 and early in 1796 "to negotiate on the part of that state, independent of the general government, for the navigation of the Mississippi, before the result of the treaty of 1795 was known."* In a letter dated June 17, 1796, Don Manuel Gayoso wrote to Daniel Clark: "It is more than probable that a separation of several states will take place, which will alter the political existence of a power that could influence on the balance of that of others; therefore, Spain, being deprived of that assistance, which could arise from her connection with the Union, will alter her views. . . . There are other insurmountable difficulties with respect to the Indians, which render impracticable the execution of the part concerning limits; therefore, even when no change should happen in the United States, the treaty (of 1795) will be reduced to the navigation of the river." This meant that the Spanish would claim that the boundary of West Florida would be as high as the Yazoo, and that the western country contemplated a separation from the Atlantic states.

In June, 1797, President Adams informed congress that the running and marking of the boundary between West Florida and the United States had been delayed by the Spanish officers at Natchez and New Orleans who declared their intention of maintaining the Spanish jurisdiction to the territory until the meaning of the article in the treaty concerning the withdrawal of the troops and the disposal of Spanish property should have been settled.† At this time, according to Mr. Ellicott, the American commissioner appointed to conduct the survey, the inhab-

* American State Papers.

† Messages and Papers of the Presidents.

itants of the Natchez district numbered nearly four thousand, and nearly all desired to come under the jurisdiction of the United States.

The ostensible reasons for the Spanish retention of the Natchez district are contained in Governor Gayoso's proclamations of March, 1797, to the inhabitants, as follows: "His Majesty has offered to support the rights of the inhabitants to the real property; and until that is ascertained, I am bound to keep possession of this country, as likewise until we are sure the Indians will be pacific," and later, "until the real property shall be secured to the inhabitants . . . by an additional article to the late treaty, and until that article is officially communicated to me, I am bound to keep possession of the country." These proclamations and the course of the Spanish officers in delaying the evacuation greatly alarmed the American residents in the district. On the 31st of March, he gave as an additional reason for the delay that it would be necessary for him to consult the Spanish sovereign concerning the method to be adopted under the treaty of evacuating the country, whether the buildings were to be removed, demolished, or left standing, before he would deliver the district to the Americans, and in the meantime he should maintain order, protect the inhabitants and keep the Indians in subjection. In July, 1797, he gave as a still further reason for retaining possession and for strengthening the fortifications "to guard against an attack by the British from Canada."* He notified Mr. Ellicott that Nogales (Walnut Hills) in particular would be strengthened. The Spanish minister at Washington had learned that an expedition of the English, the enemies of Spain, was being organized on the great lakes for the purpose of moving against the Spanish posts of St. Louis and New Madrid. He reported that the expedition was designed to descend the Fox and the Wisconsin rivers, or the Illinois river, thence down the Mississippi.

This information was sent to the Spanish authorities at New Orleans and Natchez, and preparations were promptly made there to strengthen every Spanish post in the Mississippi country. Troops were sent to Natchez, Nogales, Chickasaw Bluffs, Arkansas, New Madrid, St. Louis (three hundred), and elsewhere, and galleys armed with cannon were stationed at intervals in the Mississippi to beat back any expedition of the enemy that might descend the river. It was correctly thought by the Spanish

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* American State Papers.

authorities that the act of the United States in permitting such an expedition to be organized within its borders, and to march through its country for the purpose of attacking a nation with which it was at peace, furnished them sufficient grounds for retaining the posts at Natchez and Nogales and of strengthening those garrisons. It was learned later that, while rumors to that effect had been circulated in some portions of Canada and the United States, no positive steps were taken to organize such an expedition. But this rumor and the uncertainty over the details of the evacuation were sufficient to warrant, for the security of the Spanish possessions, the continued occupation by Spain of the American posts of Natchez, Chickasaw Bluffs, and Nogales. The uncertainty of the results of the war in Europe on American affairs had much to do, also, with the delay. In the supposed emergency, the Spanish authorities did not hesitate in an attempt to gain the assistance of the Indians of the Upper Mississippi valley. It was an important consideration for the Spaniards throughout Louisiana, in fact it was their duty for their own protection, to know whether they should under the treaty of 1795, leave standing all the posts, forts, buildings, earthworks, etc., which they had built and occupied, ready for the Americans who seemed to be siding with the English, or ready for the occupation of the British troops who should descend the Mississippi. While it is true that the Spaniards were mistaken in supposing the Americans would permit the British to pass through their country to attack the Mississippi posts, they acted for their own protection upon what they then considered good grounds. And who will undertake to say that, had they not taken prompt measures to repel such an attack, the rumor might have swelled into actuality and the expedition been dispatched ere the United States could have prevented it? The United States actually sent troops from the Ohio to Tennessee to check the settlers from trespassing on the Indian lands, but this was regarded by the Spanish as a covert movement against their possessions.*

In his proclamation of June 14, 1797, Governor Gayoso intimated the possibility of a war with the United States. It was rumored in New Orleans that a body of American troops, or militia, might descend from the Tennessee or Cumberland river and attack the Spanish posts. The basis of this rumor was the letter written to a friend by William Blount from "Colonel

* Records of the War Department.

King's Iron Works" on the Cumberland river April 21, 1797, his language being as follows: "I believe, but am not quite sure, that the plan then talked of will be attempted this fall, and, if it is to be attempted, it will be in a much larger way than then talked of; and if the Indians act their part, I have no doubt but it will succeed. A man of consequence has gone to England about the business, and if he makes arrangements as he expects, I shall myself have a hand in the business, and propably shall be at the head of the business on the part of the British. You are, however, to understand, that it is yet not quite certain that the plan will be attempted, and to do so will require all your management; I say, will require all your management, because you must take care, in whatever you say to Rogers, or anybody else, not to let the plan be discovered by Hawkins, Dinsmoor, Byers, or any other person in the interest of the United States or Spain."* The letter continued in much the same strain, guarded, but clear in the design of an attack by the British on the Spanish posts. The letter revealed, also, that the Indians were to be enlisted in the cause. It was plain to the Spaniards that the American settlers on the Tennessee and the Cumberland rivers were leagued with the British in the proposed expedition. No other settlers of the west had suffered so much from closing the navigation of the Mississippi as the residents on those rivers. Many boat loads sent down the rivers to New Orleans by them had been practically confiscated by the Spanish, or been charged ruinous rates of toll. Under the Spanish view that the Americans had no right to navigate the Mississippi, they were justified in confiscating these loads, particularly, as the Americans had been warned not to descend the river. Even after the terms of the treaty of 1795 concerning navigating the Mississippi had become known, the Spanish still continued their exactions on the river commerce; and when it was determined not to surrender the posts the previous rule of prohibiting the navigation was revived and largely carried into execution. This greatly increased the indignation of the Americans. It may be said with truth that, at this time, Spain, like France, was practically at war with the United States. Her privateers of the ocean and the Gulf seized large numbers of American vessels and confiscated their goods. This fact was well known and still further widened the breach.

Inasmuch as many of the inhabitants of Natchez were bit-

* American State Papers.

terly hostile to the Spaniards, Governor Gayoso, in order to prevent organizations against him, directed in his proclamation that all persons who might collect in bodies should be promptly dispersed. The menaces of Mr. Ellicott and of Lieutenant Pope contributed to the bitterness of the situation. It was the view of Mr. Pickering, secretary of state, that the real reason for the Spanish retention of the country was "the expectation of an immediate rupture between France, the intimate ally of Spain, and the United States." This was no doubt true, so that Spain was justified in retaining the American posts, on this ground alone, because a declaration of war by the United States against France meant war against Spain as well. The possession of these posts would give Spain immense advantage at the commencement of such a war. She was, therefore, wise to retain the posts, owing to the imminency of the danger; and she did so with such plausibility, prudence and finesse, that the retention was permitted by the United States far beyond the treaty stipulations without serious results to herself, though a bloody encounter at Natchez was narrowly averted.*

The continued retention of the posts and the strengthening of the Spanish garrisons, gave the American officers great uneasiness, because it was construed to mean that the Spanish would not abide by the treaty of 1795 and surrender the navigation of the Mississippi. In June, 1797, the residents made preparations for hostilities. The alleged unjustifiable arrest of one of their number, and his confinement in chains by the Spanish, was the immediate spur to action. The residents armed themselves, gathered in great numbers, organized companies and elected officers, and sought to enlist the active co-operation of Mr. Ellicott and Lieutenant Pope. Within a few hours Governor Gayoso and the Spanish garrison were confined to the limits of the fort, while armed and organized bands of citizens surrounded them in menacing attitude. Governor Gayoso requested an interview with Mr. Ellicott and Lieutenant Pope, which was granted. The former two were anxious to avoid hostilities, but the latter declared that he would repel with force any attempt to imprison American citizens, as Natchez was American territory.†

Finally, a pacific proclamation was issued by Governor Gayoso

* American State

† Ellicott's Journal

to the following effect: That the citizens should disperse and return to their homes; that no person should be molested on account of his opinions; that the citizens were mistaken in thinking that war had been declared between Spain and the United States; that no Indians had been called to assist Spain; that the Spanish reinforcements to the Mississippi posts were for use against an actual enemy only; that no interruptions should be put to land or water communications; and that no corps of militia should be formed except in case of actual invasion, when volunteers should be called for. The proclamation was unsatisfactory to the citizens, who strenuously objected to its phraseology, and in many instances it was torn in pieces. It did not produce the effect intended by Governor Gayoso, but rather increased the gravity of the situation, until it seemed that hostilities were inevitable. The Spanish strengthened the fort in every manner possible, and the companies of citizens were drilled and fully organized.

At this critical stage another interview was held, at which Governor Gayoso was informed that no terms would be accepted that were not honorable to the citizens, who had felt their strength and were not to be trifled with. The next day the residents held an immense meeting, at which the following proposition was drafted, and later submitted to Governor Gayoso, with the approval of Mr. Ellicott and Lieutenant Pope:

"1. The inhabitants of the district of Natchez, who, under the belief and persuasion that they were citizens of the United States, agreeably to the late treaty, have assembled and embodied themselves, are not to be prosecuted or injured for their conduct on that account, but to stand exonerated and acquitted. 2. The inhabitants of the government aforesaid above the 31st degree of north latitude, are not to be embodied as militia, or called upon to aid in any military operation, except in case of an Indian invasion, or for the suppression of riots during the present state of uncertainty, owing to the late treaty between the United States and His Catholic Majesty not being fully carried into effect. 3. The laws of Spain in the above district shall be continued, and on all occasions be executed with mildness and moderation, nor shall any of the inhabitants be transported as prisoners out of this government on any pretext whatever; and notwithstanding the operation of the law aforesaid is hereby admitted, yet the inhabitants shall be considered to be in an actual state of neutrality during the continuance of their uncertainty, as mentioned in the second proposition. 4. The committee aforesaid

do engage to recommend it to our constituents, and to the utmost of our power endeavor to preserve the peace and promote the due execution of justice."*

This proposition was acceded to by Governor Gayoso, and the following proclamation by him, dated June 22, gave general satisfaction and terminated the impending hostilities: "Whereas, the threatening calamities to which the inhabitants of this district have been lately exposed, did awake the zeal of every individual, and rouse them to seek the most efficacious means of re-establishing good order and that tranquillity which, for many days, was lost; the good sense of a number of the inhabitants dictated to them the necessity of a convention, in which they chose persons of the most notorious probity and intelligence as a committee to co-operate with us toward the re-establishment of the public peace and tranquillity; and the members of the said committee having met at Natchez, after due deliberations and consultations, stated and presented us the following propositions, in the terms and form here expressed, to-wit: (the same as above); being always desirous of promoting the public good, we do join in the same sentiment with the committee, by acceding to their propositions in the manner following (repeated the propositions). This left the American citizens free from molestation except for offense against the law, and left Governor Gayoso in charge of the administration of affairs and in possession of the post. He thus attained his object of practical authority and continued occupation.

The Spanish government did not seem disposed to hurry matters, and the United States did not deem it expedient to use force, so the troops of the former continued to hold the American posts. The autumn of 1797 wore away and winter came and still no move was made to evacuate. At length, on January 18, 1798, Mr. Ellicott received the following letter:*

"New Orleans, January 10, 1798.

"To Hon. Andrew Ellicott:

"By a packet just arrived I have received orders from court by which I am authorized and ordered to evacuate the forts of Natchez and Nogales (Walnut Hills) in consequence thereof by this express. I send the necessary orders to withdraw the artillery and other military effects. As the gallies will not be sufficient other vessels shall be sent from this (place) to com-

* Ellicott's Journal.

plete the operation with all possible speed. Please to furnish Major Minor with the information I request that I may be enabled to provide everything concerning the execution of the boundary line between His Majesty's dominions and the territory of the United States. It is with the greatest satisfaction that I have the pleasure to announce to you this agreeable event, as it justifies our disposition in complying with our engagements as soon as political circumstances would justify it.

"MANUEL GAYOSO DE LEMOS."

The reception of this letter was so agreeable to Mr. Ellicott that he lost no time in making it known to all the inhabitants, particularly to those who had favored the American purposes and contentions. In his journal he said, "The disagreeable state of suspense we had been in for almost a year relative to the fate of the treaty was partly terminated by the following letter from Governor Gayoso." However, he was too well acquainted with the methods of the Spanish to believe that they would commence the evacuation and the survey at once, and he was correct in his conclusion. On January 31, Governor Gayoso wrote that he would go to Natchez himself at once to assist in making the necessary arrangements to run the boundary. No step having been taken by the middle of February, Mr. Ellicott resolved to begin the survey alone as soon as the Spanish troops should be withdrawn. Finally, on the 9th of April he left Natchez with his instruments and his workmen, and arrived at Clarksville on the 10th, where he set up his clock and zenith sector. He found that he was three miles and two hundred and ninety perches too far north. He left Clarksville on the 24th and reached Bayou Tunica on the 26th. Here he ascertained his starting point in the middle of the Mississippi, as set down in the treaty on the northernmost point of the thirty-first degree of north latitude. On the 21st Major Minor and his laborers and on the 26th Mr. Dunbar, the astronomer, arrived, all on the part of the Spanish. On the 31st Governor Gayoso, accompanied by several officers, arrived in the camp. He had heard of the American movements without his co-operation and had thought, doubtless, that it was time for him to bestir himself. Having examined the work of the Americans, he approved the same June 1st; but when requested by Mr. Ellicott to confirm it he avoided doing so. Mr. Ellicott continued the survey, with very little assistance from the Spaniards. He reached Little Bayou Sara on June 7th, and Big Bayou Sara on July 17th. He

arrived at Thompson's creek on October 27th and Pearl river November 19th. They opened a strip sixty feet wide through an almost impenetrable thicket, the Spaniards reluctantly assisting.* Governor Gayoso owned a large plantation at Natchez, having previously secured it with the expectation that the Natchez district would become a part of the Spanish dominions. Being himself an ardent Spaniard, he saw with intense regret the boundary line established about thirty-nine miles due south of Natchez. Thomas Power, a Spaniard well known in the western country for his participation in the secret acts of the Spanish authorities to induce the western people to separate themselves from the Atlantic states and unite with the Spanish Louisiana, was the commissioner for the survey on the part of Spain; but he was more of a hindrance than an assistance to the Americans in the practical operations of the survey.

The Spanish authorities in New Orleans were at this time exceedingly fearful of the Americans; so much so that upon the arrival of Gen. James Wilkinson about this time in the lower country, Governor Gayoso armed and called out the militia and made other defensive operations.* Mr. Ellicott wrote to the authorities at Washington on November 8, 1798, that "the fears and jealousies of the Spanish nation will certainly, in the course of a few years, occasion the loss of all the country on this side of the Mississippi to the crown of Spain." His prediction proved singularly correct. They lost not only that territory, but ere long were stripped of all their possessions in both of the Americas. It was inevitable—was the logical result of the settled policy of ignorance and exclusion of the Spanish government.

It was unquestionably the intention of the Spanish authorities of Louisiana, under the orders of the Spanish monarch, to hold the American posts on the Mississippi, if possible, until it should be determined whether France and the United States were to become involved in war. Spain was at this time the puppet of the French republic. It was realized by France, under the stimulus of the revolutionary government, that a protracted war with England might give her the coveted opportunity to recapture Canada. It was also known to the French directory that pressure brought to bear upon Spain would result in the retrocession of Louisiana to France. But the Upper Mississippi valley could not be secured, it was thought, without a war with the United States. France held strong resentment against the

* Ellicott's Journal.

United States, because the latter had seemingly favored the commerce of Great Britain rather than that of France. She who had been the essential instrument which enabled the American colonies to gain their independence, was now obliged not only to suffer actual and serious injury to her commerce by the acts of the United States, but to witness the ingratitude shown in the favors granted to Great Britain, the former enemy of both. Such was the view of France. When the war of 1793 burst forth in all its fury, France grew still more bitter because the United States would not consent to become her active ally against Great Britain. The proceedings of Mr. Genet were instigated by the French government; and when his course was checked and his recall was requested, the resentment of France found abundant fuel in privateering on American commerce and in humiliating the American envoys. The similar acts of Spain were due to French influence. While the war, begun in 1793, between France and Great Britain continued, there was no likelihood that the former would molest the United States; but should she succeed in regaining Canada by conquering Great Britain, Louisiana was certain to pass to her possession, and, if she could browbeat or whip the United States, all the Upper Mississippi valley would share the same lot. This was well known to American statesmen, and, therefore, they preferred that Louisiana should remain in the possession of Spain rather than pass to France. The latter was a neighbor to be dreaded, while Spain was weak and yielding.

But France could not crush Great Britain nor regain Canada in the war of 1793, and her disappointment was reflected in her treatment of the United States. Her privateers ravaged American commerce until in 1797-98 war was imminent and seemed inevitable. Spain was completely under the domination of France, and the latter was no doubt responsible for the Spanish retention of the American posts on the Mississippi.* An intimation even for their retention, from France to Spain, was all the inducement needed. Either preferred the other to hold Louisiana rather than the United States. Their retention, in case of a war between Spain and the United States, not only meant immense early advantage to the former, but assured her of the active and potential assistance of France. Therefore, the posts were held until France had definitely decided to settle without

* Monroe's Memoirs.

a war her disputes with the United States. Spain, having already ceded all of the country above the thirty-first degree to the United States by the treaty of 1795, had no other motive in retaining the American posts than to aid France. In fact, having thus ceded the country, it was to her advantage, omitting the considerations of France, to surrender the posts and thus retain the good will of her neighbor, the United States. But the will of France prevailed, and the diplomacy of the Louisiana authorities enabled Spain to retain, without war with the United States, the entire Natchez district for about a year and a half beyond the expiration of the treaty limits.

CHAPTER III

The Treaty of Retrocession, 1800

THE republic of France had scarcely become firmly established before the directory began to consider the question of securing the retrocession of Louisiana from Spain. The confidence with which France pursued this object indicates that owing to some secret understanding at the date of the cession of Louisiana to Spain in 1763, or at some subsequent date, the latter was under obligations to retrocede the province to the French government, either upon demand, or upon the fulfillment of certain conditions or agreements. As early as 1794 the French ambassador to the court of Spain, Citizen Perignon, was instructed to sound that government in regard to the retrocession of Louisiana; and it was announced in the ambassador's dispatches that Spain seemed to acquiesce in the demand, in order to secure for the Duke of Parma, as France proposed, an enlargement of his states in Italy.* It should be particularly noted that France demanded at this time West Florida also, taking the position that, under Spain, Louisiana embraced West Florida as it did previous to 1763 under France. But the French government could not yet deliver the territory in Italy desired, therefore negotiations were interrupted and delayed. In 1797, Delacroix, the French minister on exterior relations, wrote to General Bonaparte that "This treaty ought to have as basis the cession of Louisiana and of West Florida to the republic, upon the supposition that events permit the French government to procure for the Duke of Parma an augmentation of territory, such as Romagna or any other part."‡ Accordingly,

* History of France: Wright.
‡ Napoleon Correspondence.

full powers were sent to Mr. Perignon to conclude the treaty on this basis; but Spain was not satisfied with the assurance that France could deliver the desired territory in Italy, and therefore delayed reaching an agreement. In 1800 Mr. Berthier was sent as an envoy extraordinary to Madrid to resume the negotiations, and was instructed by the consular government to demand Louisiana and the two Floridas. But an agreement with Spain on this basis could not be reached. The ambassador said, in his dispatches of August 25, 1800, "The answer of the king to the minister of foreign affairs of France was, that he would perform the promise which he had given for the retrocession of Louisiana, as it had been ceded by the treaty of 1763; that he would never consent to cede the Floridas, and that he was surprised that, after having yielded that which was so long solicited, new demands should be made upon him."*

At the same time, he communicated that the Spanish minister, Mr. Urquijo, "allowed him to understand that, at a general peace, the king might cede half of West Florida, situated between the left bank of the Mississippi and the river Mobile." France, at this date, was engaged in the war with England, and Spain desired a general peace before ceding any part of Florida. The king of Spain having thus signified his willingness, *agreeably to promise*, to retrocede Louisiana to France, the transfer was secretly made October 1, 1800, while the war was still in progress. After the treaty of Amiens, which was concluded March 25, 1802, the consular government instructed General Beurnonville, French ambassador to Madrid, to effect the following objects: "The most important affair with which you will occupy yourself is to facilitate this last delivery (of Louisiana), which ought to take place before the end of the season, by obtaining from the Spanish government, that it give to the governor of Louisiana, if not already done, specific orders to deliver it to the captain general which the consul sends there. . . . . The retrocession made by Spain only extends from the east of the Mississippi, but the secretary of state, M. Urquijo, had given hopes to General Bertrand, chargé of this negotiation, and who insisted on the cession of one of the Floridas, that at the general peace, he did not doubt that the king would consent to cede all that part of the Floridas which extends to Mobile, if the premier consul asked for it. The difficulties which Spain afterward threw in the way of completing the cession of Louisi-

* Napoleon Correspondence.

ana caused the French government to think, hitherto, that the moment was not yet arrived to ask an extension of territory; but peace has placed France in such a favorable position, that it does not seem necessary to adjourn any longer the necessary steps to obtain the aggrandizement with which the minister of the king of Spain flattered the French chargé d'affairs. The part of Florida which you have to lay claim to, belonged to France before the peace of 1763. It is evident she wishes to reacquire this former possession where there are doubtless a great number of French families". General Beurnonville was given elaborate instructions and full powers to treat for the possession of the two Floridas, and was authorized to cede therefor the duchy of Parma. He took with him complete plans for the treaty, prepared by Napoleon, one article reading as follows:*

"Article IV. Spain, in compensation for the advantages guaranteed to her by the present treaty, retrocedes to France the river and port of Mobile, and the territory which belonged to it before 1763, to the west of that river only, from the most northern point of the thirty-first degree of north latitude to the river of Iberville and the Gulf of Mexico. Further, she cedes to France the other part of West Florida and all East Florida, with the rivers, lakes, ports, bays, isles and straights, dependent on each several territory, and extending to the north into the line of demarcation traced in Article II of the treaty of friendship, of limits, and of navigation, concluded the 27th October, 1795, between His Catholic Majesty and the United States of America."

But despite the inducements and the pressure brought to bear upon Spain, the French government was unable to obtain the two Floridas, or any part of either. The efforts to secure them were continued persistently for nearly a decade, first by the French directory and then by the consular government; but, as Spain was under no obligations to return them, though she had promised to return Louisiana † she refused to do so, even though threatened by the first consul. There can be no doubt that the consular government fully realized the vast importance of possessing Louisiana, the two Floridas, the control of navigation on the Mississippi, and, therefore, to a pre-eminent degree,

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* Senate Documents 56, 2d Session, 23d Congress.

† Spain seemed to have been under an agreement contained in a *secret* article of the *secret* treaty of 1762, or of the "Family Compact" of 1761, to retrocede Louisiana to France upon conditions not wholly understood.

the commercial supremacy of the Gulf. The old monarchy of France had been rent asunder, the new citizens' government was alert and ambitious, and cared nothing for the sacredness of the "family compact" except as it enabled them to demand the retrocession of Louisiana according to the promise of the Spanish monarch, and to secure, if possible, by cajolery or threats, a part or the whole of the two Floridas. Napoleon saw the golden opportunity of establishing on the Gulf a magnificent empire of the French people, with the beautiful capital at New Orleans, with the commerce of the world on the Gulf under French tribute and domination, and with a prodigious demand for all the products of the French manufactories. It meant the enrichment and glorification of France far beyond anything yet conjectured or dreamed of. It meant the practical enslavement of the Western states of America, or the purchase by them of French condescension upon terms wholly at the pleasure and under the dictum of France. It meant the absolute exclusion of Great Britain from the Mississippi and from the Gulf and the ultimate loss of her West India possessions. It meant the probable extension of Louisiana into Mexico and perhaps into Central America. It was a splendid conception—a magnificent dream of conquest, dominion and power; but like many other dreams of empire during that volcanic period was short-sighted, illogical and impossible of execution.

The failure of France to comply with the stipulations contained in the treaties with Spain concerning the retrocession of Louisiana, caused the latter to withhold the orders for the delivery of the machinery of government at New Orleans until the conditions agreed upon had been wholly fulfilled. As soon as the considerations had passed, the Spanish monarch, at Barcelona, on October 15, 1802, issued the following royal order: "Whereas, I have judged it proper to retrocede to the French republic the colony and province of Louisiana, I command you, as soon as these presents are exhibited to you by General Victor, or any other officer duly authorized by said republic to receive the same, to put him in possession of the colony of Louisiana and its dependencies, together with the city and island of New Orleans, with the same limits it has at present, which it had whilst it belonged to France, and at the same time she ceded it to my royal crown, and as such it ought to be found after the treaties successfully concluded between my states and those of other powers, in order that henceforth the same may belong to said republic, and that she may cause

it to be administered and governed by her own officers and governors, as her own possession without any exception whatever."*

The Spanish commissioners, Manuel Salcedo and Sebastian Calvo, appointed by the Spanish crown to deliver Louisiana to the French authorities, issued the following proclamation to the inhabitants of the Province:

"We make it known to all the vassals of the king, our master of all classes and conditions whatsoever, that his Majesty has resolved to make a retrocession of the Province of Louisiana, for the mutual satisfaction of both powers; and continuing to give the same proofs of protection and affection which the inhabitants of this province have always received, he has thought fit to settle among other things certain points which we deem it our duty publicly to make known for the particular government and disposition of all whom it may concern:

"His Majesty in considerations of the obligations imposed by the treaties and wishing to avoid the differences which might arise, has been pleased to resolve, that the delivery of the colony and Island of New Orleans, which is to be made to General Victor, or other officer, lawfully authorized by the Government of the French Republic, shall be made in the same manner that it was ceded by France to his Majesty, by virtue of which the limits of both shores of the River St. Louis or Mississippi shall remain as irrevocably fixed by the seventh article of the definitive treaty of peace, concluded at Paris on the 10th of February, 1763; and consequently the settlements from the river Manshack or Iberville, to the line which divides the American territory from the dominions of the King, shall remain in the possession of Spain and annexed to West Florida."†

ACT OF DELIVERY OF THE PROVINCE OF LOUISIANA BY SPAIN TO FRANCE.

"The undersigned, citizen Pierre Clement Laussat, Colonial prefect, commissioner on the part of the French government, to receive possession in the name of the French Republic of the Colony or Province of Louisiana, from the hands of the officers and other agents of His Catholic Majesty, agreeably to the full powers which he has received, in the name of the French people, from Citizen Bonaparte, First Consul, under date of the 17th

* History of France: Wright.

† American State Papers.

Prairial year 11 (6th June, 1803), countersigned by Hugues Maret, secretary of state, and by his excellency Decres, minister of marine and of the colonies, and recently delivered in person to the commissioners of his said Catholic Majesty, together with the royal order, dated from Barcelona, 15th October, 1802.

"And the said commissioners of his Catholic Majesty, Don Manuel de Salcedo, brigadier in the King's armies, military and political governor of the provinces of Louisiana and West Florida, inspector of the veteran troops and militia of said provinces, royal vice patron, sub-delegate, judge of the superintendence of the post-office department, &c., and Don Sebastian Calvo de la Puerta y O'Farrell Marquis Casa Calvo, knight of the order of St James, brigadier in the King's armies and colonel of the infantry regiment of the Havana, appointed commissioner of his Catholic Majesty, for the delivery of this Province to the French Republic, according to the royal order of the 18th February, 1803:

"CERTIFY by these presents that on this eighth day of Frimaire, in the twelfth year of the French Republic and thirtieth November, 1803, having assembled in the hall of the hotel of the city of New Orleans, accompanied on either part by the chiefs and officers of the armies of land and sea, the secular and ecclesiastical cabildo, the administration of finances of the King of Spain, the civil administration, and by other distinguished persons of their respective nations, said Citizen Laussat delivered to the said commissioners of his Catholic Majesty the above mentioned full powers from citizen Bonaparte, First Consul of the French republic; and immediately after the said Manuel de Salcedo and the Marquis of Casa Calvo declared that by virtue of, and in conformity to, the terms of the order of the King of Spain, dated from Barcelona the 15th of October, 1802, and countersigned by Don Pedro Cervallos, first secretary and counsellor of state, they from that moment did put the French commissioner, Citizen Laussat, in possession of the Colony of Louisiana and its dependencies, as also of the city and island of New Orleans, with the same extent which they have on this day, and which they had while in the hands of France when she ceded the same to the royal crown of Spain, and such as they ought to have been since the treaties successively concluded between the States of his Catholic Majesty and those of other Powers, in order that the same may henceforth belong to the French Republic and be governed and administered by its officers and governors, in such manner as will best suit its interests; and they have accordingly solemnly

delivered to him the keys of this place, declaring that they absolve from the oath of fidelity to his said Majesty, all such inhabitants as may choose to continue in the service of dependence of the French Republic.

"And to the end that the same may forever hereafter appear by this solemn act, the undersigned have signed these presents in the French and Spanish languages, have hereto affixed their seals, and caused the same to be countersigned by the secretaries of the respective commissions, the day, month and year above written.

"LAUSSAT."

"By the colonial prefect and commissioner on the part of the French Government.

"DAUGEROT,
"Secretary of the Commission.

"Andres Lopez Armisto,
"So del Gobo.
"y de la Comm'on.

"MANUEL DE SALCEDO,
"EL MARQUEZ DE CASA CALVO."

Below is written:

"Deposited in the archives of the city hall of this commune, New Orleans, the 6th Ariose, year 12 of the French Republic, and 28th December, A. D. 1803."

"LAUSSAT."

"By the colonial prefect and commissioner on the part of the French Government."

"DAUGEROT,
"Secretary of the Commission.

The following is in full the text of the treaty of retrocession, concluded October 1, 1800, by which Louisiana was returned to France, according to the promises of the king of Spain, contained in a *secret* article of the *secret* treaty of 1762, by which Louisiana passed to the crown of Spain. Though this *secret* treaty was made public in the United States in 1834, the *secret* article of this *secret* treaty seems never to have been printed or circulated in this country. The double secrecy has thus proved an effectual bar to publicity:*

* Treaties of the United States.

"PRELIMINARY AND SECRET TREATY BETWEEN THE FRENCH REPUBLIC AND HIS CATHOLIC MAJESTY, THE KING OF SPAIN, RELATING TO THE AGGRANDIZEMENT OF HIS ROYAL HIGHNESS, THE INFANT DUKE OF PARMA IN ITALY, AND TO THE RETROCESSION OF LOUISIANA.

"His Catholic Majesty having always manifested the most anxious desire to procure for his Royal Highness, the Duke of Parma, an aggrandizement which might place him on a footing corresponding with his dignity; and the French Republic having long since given to his Catholic Majesty, the king of Spain, to understand the desire which they feel to recover possession of the colony of Louisiana, both Governments having interchanged their views upon these two subjects of common interest and circumstances permitting them to enter into engagements in this particular which, as far as it depends on them, may assure reciprocal satisfaction, have authorized for this purpose, that is to say, the French Republic, the citizen Alexander Berthier, general-in-chief; and his Catholic Majesty, Don Mariano Luis de Urquijo, chevalier of the order of Charles III and of St. John of Jerusalem, counselor of state, his envoy extraordinary and plenipotentiary, near the Batavian Republic, and his provisional first secretary of state; who after having exchanged their powers have agreed, saving the ratification, upon the following articles:

"Article 1. The French Republic engages to procure for His Royal Highness, the Infant Duke of Parma, an augmentation of territory which shall raise the population of his estates to one million of inhabitants, with the title of king and all the rights annexed to royal dignity; and to this effect the French republic engages to obtain the consent of his Majesty, the Emperor and King, and of the other states interested, so that His Royal Highness, the Infant Duke of Parma, may, without opposition, enter into possession of said territories at the time of the confirmation of the peace between the French Republic and his Imperial Majesty.

"Article 2. The augmentation to be given to His Royal Highness, the Duke of Parma, may consist of Tuscany, in case the present negotiations of the French Government with His Imperial Majesty shall permit them to dispose of that country, or of the three Roman ecclesiastical provinces, or any other continental provinces of Italy that may form a rounded estate.

"Article 3. His Catholic Majesty promises and engages on his part to retrocede to the French Republic, six months after the

full and entire execution of the conditions and stipulations herein expressed in relation to His Royal Highness, the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and had while in the possession of France, and such as it ought to be in conformity with the treaties subsequently concluded between Spain and other states.

"Article 4. His Catholic Majesty will give the necessary orders for the occupation of Louisiana by France the moment the estates designed for his aggrandizement shall be placed in the hands of His Royal Highness, the Duke of Parma. The French may according to its convenience defer the taking possession; and when this is to be done the States directly or indirectly interested shall agree upon the ulterior conditions which their common interests and that of their inhabitants may demand.

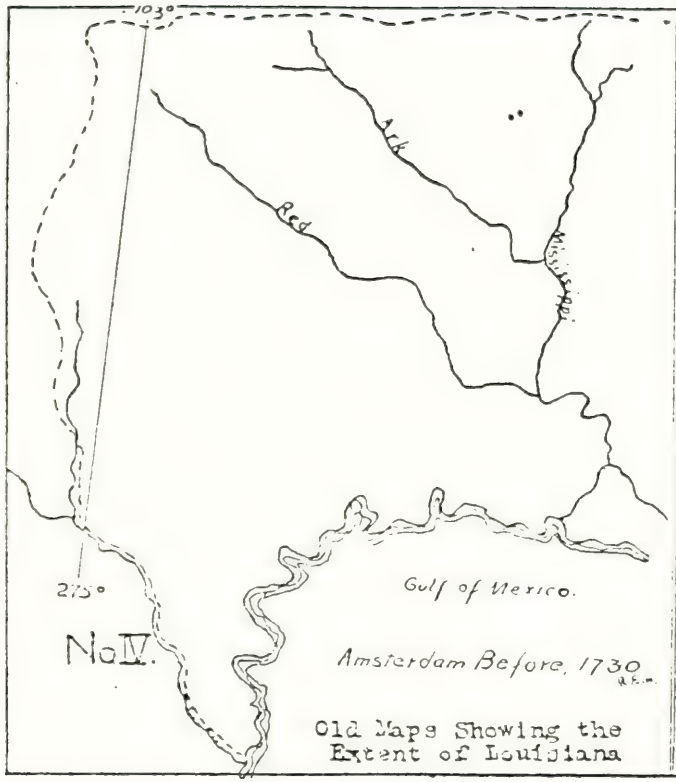
"Article 5. His Catholic Majesty engages to deliver to the French Republic in the ports of Spain in Europe, one month after the execution of the stipulation with regard to the Duke of Parma, six ships of war in good condition, of seventy-four guns, armed and equipped, and in a state to receive the French crews and supplies.

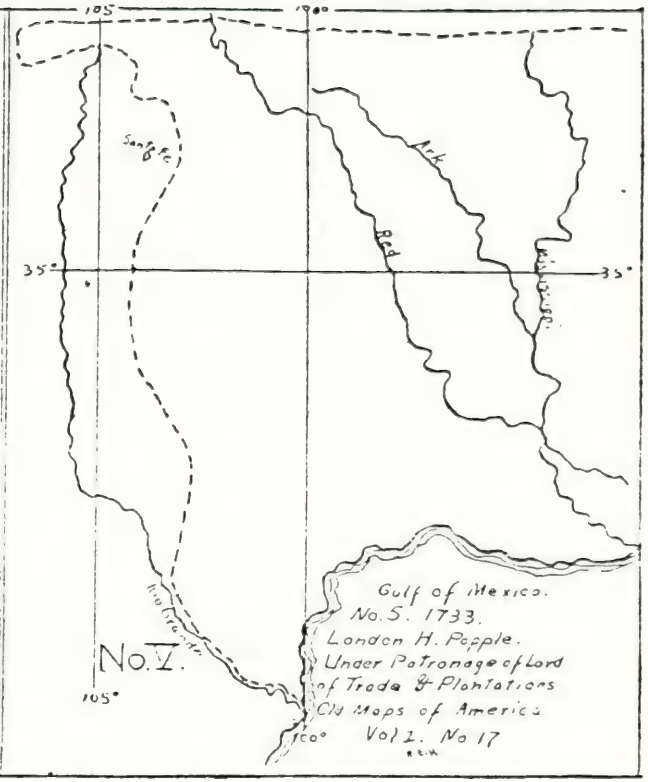
"Article 6. The stipulations of the present treaty having no prejudicial object, but on the contrary preserving untouched the rights of every one, is not to be presumed they can excite the suspicions of any power. But if the contrary should happen and the result of their execution should be that the two estates are attacked or threatened, both powers to engage to make common cause as to repel aggression as also to take those conciliatory measures proper to maintain peace with all their neighbors.

"Article 7. The obligations contained in the present treaty in nothing annul those which are expressed in the treaty of alliance signed at St. Ildefonso on the second Fructidor, year 4 (18th August, 1796); on the contrary, they unite with new ties the interests of the two Powers, and confirm the stipulations of the treaty of alliance in all the cases in which they can be applied.

"Article 8. The ratifications of the present preliminary articles shall be completed and exchanged in the period of one month, or sooner if possible, counting from the date of the signing of the present treaty.

"In faith of which we the undersigned ministers plenipotentiary of the French Republic and of His Catholic Majesty by virtue of our respective powers have signed the present preliminary articles and have affixed our seals.





Old Maps Showing the Extent of Louisiana

Done at St. Ildefonso the 9th Vendimaire, 9th year of the French Republic (1st October, 1800).

"ALEXANDER BERTHIER,
"MARIANO LUIS DE URQUIJO."

This was ratified by Bonaparte October 10, 1800, and attested by Charles Maurice Talleyrand, minister of foreign relations, and Hughes Maret, secretary of state. It does not appear ever to have been ratified on the document itself by the king of Spain. By another treaty concluded March 21, 1801, by Lucien Bonaparte and the king of Spain, various other changes of territory were made to meet the wants of both France and Spain. Article 6 of this treaty is as follows:

"Article 6. As this treaty has its origin in that concluded between the First Consul and his Catholic Majesty, by which the King retrocedes to France the possession of Louisiana, the contracting parties agree to carry into effect the articles of that treaty; and that, while the difficulties with regard to them are in process of arrangement, the present treaty shall not destroy the rights of either party."

Late in March, 1801, it was rumored in Paris and London that Louisiana and the Floridas had been ceded by Spain to France; and soon afterward the same reports were swiftly circulated throughout Louisiana and the United States. In a letter dated London, March 20, 1801, Rufus King, minister to England, informed the secretary of state of the currency of the rumors in Europe. He further said that the transfer had "in all probability" been executed; that the cession embraced Louisiana and the two Floridas; that influential persons in France entertained the opinion that nature made the Alleghany mountains "a marked line of separation between the people of the United States living upon the two sides of the range of mountains which divides their territory;" and that he was "apprehensive that this cession is intended to have, and may actually produce, effects injurious to the union and consequent happiness of the people of the United States."* He said in another letter dated June 1, that the English ministry was greatly exercised by the rumors, because they realized that, should they be true, "the acquisition might enable France to extend her influence, and perhaps her dominion up the Mississippi, and through the lakes even to Canada;" that France would thus succeed in reversing the results of the "seven years'

* Diplomatic Correspondence.

war" (1755-63); and that the proximity of the Floridas to the British West Indies "was strong reason why England must be unwilling that the territory should pass under the dominion of France."

On June 9 Mr. Madison, secretary of state, requested Charles Pinckney, minister to Spain, to learn all that was possible concerning the cession. He said, "The whole subject will deserve and engage your early and vigilant inquiries and may require a very delicate and circumspect management." He observed that the motives of Spain were not obvious, while those of France were; that, inasmuch as alarms had prevailed in France during and since the late war of designs on the part of Great Britain to wrest the mouth of the Mississippi from her, "she may have concluded a pre-occupancy of it by herself to be a necessary safeguard against an event from which that nation would derive a double advantage of strengthening her hold on the United States, and of adding to her commerce a monopoly of the immense and fertile region communicating with the sea through a single outlet;" that means should be found to divert France from securing Louisiana, among which were "that the United States were not disposed to enter, nor are in danger of being drawn, into partialities toward Great Britain unjust or injurious to France; that our political and commercial interests afford a sufficient guaranty against such a state of things; that without the co-operation of the United States Great Britain is not likely to acquire any part of the Spanish possessions on the Mississippi, and that the danger of collision between the two republics was not a remote contingency "from the conflicts in their regulations of a commerce involving the peculiarities which distinguish that of the Mississippi."

These views, which Mr. Madison represented to be those of the president, were also sent to Mr. Livingston, minister to France. The latter was instructed to use every argument available to deter France from securing Louisiana, but if this could not be done her good will was to be retained. In this event, he was instructed, should the Floridas be included in the cession, to secure their transfer to the United States if it could be done. He said, "the great importance of West Florida to the United States recommends to your patriotism the prudent use of every fair consideration which may favor the attainment of the object."[1]

The treaty by which Louisiana passed to France was secret, and though its substantial provisions became known to the world,

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[1] Diplomatic Correspondence.

the first positive evidence to reach the United States was contained in a copy of the treaty of March 21, 1801, between Lucien Bonaparte and the king of Spain, sent by Rufus King from London in November, 1801, to the secretary of state, in which it was stated that "this treaty being in consequence of that already concluded between the First Consul and His Most Catholic Majesty, by which the King cedes to France the possession of Louisiana, the contracting parties agree to carry the said treaty into execution and to arrange it in conformity to their respective rights." As late as December 10, 1801, Mr. Livingston wrote that the French minister of state had stated that "nothing had been concluded, or even resolved on, in that affair." However, Mr. Livingston announced that he was satisfied for various reasons that the cession had been really concluded. One day later he wrote, "In addition to what I wrote you yesterday, I have only to mention, that I am more and more confirmed notwithstanding what I there say of the minister's assurance, that Louisiana is a favorite object and that they will be willing to part with it on the condition I mentioned. Speaking of the means of paying their debts to one of their ministers yesterday, I hinted at this. His reply was, 'none but spendthrifts satisfy their debts by selling their lands,' adding, however, after a pause, 'but it is not ours to give.'" A few days later he wrote, that France was preparing a large armament ostensibly for Hispaniola, but in reality for the occupation and government of Louisiana. He said, "That Spain has made this cession (which contravenes all her former maxims of policy) cannot be doubted, but she is no longer a free agent. . . . It puts Spain in a perpetual state of pupilage, since she must always tremble for the safety of her colonies in case of rupture. To avoid this evil, she must grant every commercial and political advantage to France."

The French ministry continued to deny that Louisiana had been retroceded to France, even after the fact became known positively to the public through secret or private sources. Unquestionably, France expected vigorous opposition to the treaty from both Great Britain and the United States; therefore, she concealed it as long as possible (the treaty not having been ratified yet by the king of Spain), and in the meantime made extensive preparations to send to New Orleans a large body of troops to take possession and later a large colony to occupy the country. The secrecy was partly due to a surmise that England, with whom France was on the point of war again, intended to send a fleet to the mouth of the Mississippi, and such a movement was really contemplated.

France suspected that the United States had "an eye to the conquest of her West India islands." Rufus King, at London, echoing the reports circulated in England, spoke of "the establishment of this colony (Louisiana) as a darling object" of the first consul.* Mr. Livingston wrote from Paris February 6, 1802, "The establishment (of the Louisiana colony) is disapproved by every statesman here as one that will occasion a great waste of men and money, excite enmities with us, and produce no possible advantage to the nation. But it is a scheme to which the First Consul is extremely attached; and it must, of course, be supported. You will find by the enclosed note that I have pressed an explanation on the subject, but I have received no answer. I have it, however, through a friend, from the First Consul, that it is by no means their intention to obstruct the navigation of the Mississippi, or violate our treaty with Spain. General Bernadotte is understood to be designated for the command and to have asked ten thousand troops." St. Domingo, Guiana and other French colonial possessions, as well as Louisiana, were to be strengthened and protected.

On February 20, Mr. Livingston addressed a note to Mr. Talleyrand, French minister of exterior relations, requesting a statement of the probable attitude of France on the question of boundary, navigation and other rights secured to the United States by the treaty with Spain, and gave as a reason for the inquiry "the alarms of the people in the western part of the United States over the reported future arrival of a large body of French troops in their vicinity." He also asked whether East or West Florida was included in the cession, but Mr. Talleyrand pleasantly evaded all of his questions. In his letters of March 10 and 24 Mr. Livingston said:

"The fact is they (the French) believe us to be certainly hostile to this measure, and they mean to take possession of it (Louisiana) as early as possible and with as little notice to us as they can. They are made to believe this is one of the most fertile and important countries in the world; that they have a much greater interest with the Indians than any other people; that New Orleans must command the trade of our whole western country; and of course that they will have a leading interest in its politics. It is a darling object with the First Consul, who sees in it a means to gratify his friends and to dispose of his armies. . . . I cannot help thinking that it would be advisable for the

* Diplomatic Correspondence.

present congress to take measures for establishing the Natchez or some other port and giving it such advantages as would bring our vessels to it without touching at Orleans. I have but one hope left as to defeating this cession. It consists in alarming Spain and England. The Spanish minister is now absent, but I have not failed to show, in the strongest light to the minister of Britain the danger that will result to them from the extension of the French possessions in Mexico and the probable loss of Canada if they are suffered to possess it. . . . I believe such is the state of things here (in France and such the desire for peace, that Britain may force them to relinquish Louisiana, particularly as the people here are far from desiring the establishment of any foreign colony which they consider as a weak point and drain for the population and wealth. It is impossible to see the extent of the power France will have in and over America. As part of the territory of Spain, Louisiana has no precise boundary, so it is easy to foresee the fate of Mexico. Britain will judge how far she is able to contend with France, enriched by the treasures of Spain. The boundary between Canada and Louisiana is alike unsettled. The dispositions of a great part of the natives of that country are friendly to France; her influence over the Indian tribes has always been and will again be much greater than that of the British, both from the disposition and manners of her people and from the whole body of carriers in the Indian trade being native Canadians and much the greater part of them mongrel French. It is impossible to say what their influence may be upon our western country in case of a controversy with Great Britain, particularly if they keep the keys of it by possessing the mouth of the Mississippi or invite their aid in the plunder of Mexico."*

In his letter of April 24 Mr. Livingston said, "It appears very extraordinary that Mr. Pinckney (minister to Spain) still supposes that the Floridas are not included in the cession and that he has made an offer to purchase them. You may, however, be fully assured that the Floridas are given to France, and that they are at this moment fitting out an armament from here to take possession. The number of troops designed for this object is between five and seven thousand. They will shortly sail for New Orleans unless the state of affairs in St. Domingo should change their destination. It would be wise immediately to take measures to enable the Natchez to rival Orleans. If congress make Natchez

* American State Papers.

a free port, and if the state of affairs in St. Domingo should employ the troops designed for Louisiana, time will still be left for gold to operate here."

Mr. Madison, secretary of state, in letters dated May 1st, reflected the uneasiness, perhaps anxiety, with which the cession to France was regarded by the administration. He said, "We are fully aware of the tendency of the reported cession of Louisiana to plant in our neighborhood troubles of different kinds, and to prepare the way for very serious events. It has accordingly been a primary object with the President to obviate such an event. . . . The cession of Louisiana to France become daily more and more a source of painful apprehensions." To Mr. Livingston he said, "Since the receipt of your last communications, no hope remains (of preventing the cession of Louisiana to France), but from the accumulating difficulties of going through with the undertaking and from the conviction you may be able to impress, that it must have an instant and powerful effect in changing the relations between France and the United States. The change is obvious; and the more it can be developed in candid and friendly appeals to the reflections of the French government, the more it will urge it to revise and abandon the project. A mere neighborhood could not be friendly to the harmony which both countries have so much at interest in cherishing; but if a possession of the mouth of the Mississippi is to be added to the other causes of discord, the worst events are to be apprehended. You will consequently spare no efforts that will consist with prudence and dignity to lead the councils of France to proper views of this subject and to an abandonment of her present purpose. You will also pursue by prudent means the inquiry into the extent of the cession, particularly whether it includes the Floridas as well as New Orleans, and endeavor to ascertain the price at which these, if included in the cession, would be yielded to the United States."

In a letter dated April 18, 1802, President Jefferson wrote to Mr. Livingston, minister to France, that "The day that France takes possession of New Orleans fixes the sentence which is to restrain her forever within her low water mark. It seals the union of two nations who in conjunction can maintain exclusive possession of the ocean. From that moment we must marry ourselves to the British fleet and nation. We must turn all our attention to a maritime force, for which our resources place us on very high ground; and having formed and cemented together a power which may render re-enforcement of her settlements here

impossible to France make the first cannon which shall be fired in Europe the signal for tearing up any settlement she may have made and for holding the two continents of America in sequestration for the common purposes of the united British and American nations."*

On May 7, in response to a request of Mr. King for the views of Great Britain on the question of the cession, Lord Hawkesbury replied, "With regard to the free navigation of the Mississippi, I conceive that it is perfectly clear, according to the law of nations, that in the event of the district of Louisiana being ceded to France, that country would come into the possession of it subject to all the engagements which appertained to it at the time of the cession; and that the French government could consequently allege no colorable pretext for excluding His Majesty's (the King of England) subjects, or the citizens of the United States, from the navigation of the river Mississippi." * *

Previous to May 11, 1802, the views and intentions of Spain concerning the cession were unknown to the United States, but on that date Mr. Pinckney was requested to communicate all that could be learned on the subject at Madrid. Mr. Madison said to him, "What the intentions of Spain may be, we wait to learn from you. Verbal information from inofficial sources has led us to infer that she disowns the instrument of cession and will rigorously oppose it. Should the cession actually fail from this or any other cause, and Spain retain New Orleans and the Floridas, I repeat to you the wish of the President that every effort and address be employed to obtain the arrangement by which the territory on the east side of the Mississippi including New Orleans may be ceded to the United States and the Mississippi made a common boundary, with a common use of its navigation for them and Spain. . . . . You may not only receive and transmit a proposition of guaranty of her territory beyond the Mississippi, as a condition of her ceding to the United States the territory including New Orleans on this side, but in case it be necessary may make the proposition yourself in the forms required by our constitution. You will infer from this enlargement of your authority, how much importance is attached to the object in question, as securing a precious acquisition to the United States, as well as a natural and quiet boundary with Spain."†

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* Writings of Thomas Jefferson: Ford.
** Diplomatic Correspondence.
† Madison's Papers.

Late in May, Mr. Livingston informed the secretary of state that "Bernadotte is to command, Collot second in command, Adet to be Prefect; but the expedition is delayed till about September, on account (as Talleyrand expressed himself to Bernadotte) of some difficulty which had arisen from the different apprehensions of France and Spain relative to the meaning of the term Louisiana, which has been understood by France to include the Floridas, but probably by Spain to have been confined to the strict meaning of the term. This explains why I could never get an answer to my questions relative to the extent of the cessions, and upon which the French government had probably no doubt till we started it. This is my conjecture as to the cause of the delay in starting the expedition."‡

Early in June, in answer to an inquiry of Mr. Livingston, the Spanish minister to the French republic, J. Nicolay D'Azara, said, "It appears certain that a treaty ceding Louisiana has been concluded, but I am of the opinion that the Floridas are not comprised in the cession." On July 30 Mr. Livingston wrote to the secretary of state: "I have been applied to by one of the ministers here (Paris) to know what we understand in America by Louisiana. You can easily conceive my answer. I have just received a letter from Mr. Graham, in which he communicates the Spanish minister's answer to Mr. Pinckney's application upon the same subject in these words: 'If the King should think proper to cede Louisiana, he will take care that the interest of the United States shall not be affected by it.' It appears also by the fifth article of the treaty of Madrid, March 21, 1801, that the cession had been made of *Louisiana generally*. The French, you know, have always extended it to South Carolina and all the country on the Ohio. Since the possession of the Floridas by Britain and the treaty of 1763, I think there can be no doubt as to the precise meaning of the terms."

Under the urgent instructions of the state department, the ministers to France and Spain exhausted every resource at their command to prevent (as they hoped they could) the ratification of the cession treaty. Mr. Livingston, at Paris, became so insistent that the French minister of state adopted the policy of evasion; but the tactful American sought and secured another channel to the ears of the first consul.* He prepared lengthy memorials, embracing every conceivable argument

‡ American State Papers.

* Diplomatic Correspondence: See numerous letters.

against the French possession of Louisiana, prepared particularly to influence the judgment of the first consul, and managed to have them conveyed privately to Napoleon by Joseph Bonaparte, his brother. Yet, at the same time, he was informed at every interview with the French statesman that the acquisition of Louisiana was dear to the heart of Napoleon, who continued his elaborate preparations to send large and expensive colonies to the Mississippi and strong armaments to sustain them. Thus, although the American minister succeeded in gaining the attention of this wonderful man, he had to combat the unerring judgment that placed a just valuation on the control of the Mississippi and the ownership of the vast country to the westward. The orders of Napoleon to send a large armament to Louisiana were not designed merely as a show of force to prevent an interference with the French occupation, but signalized his estimate of the value of the province. The troubles in St. Domingo were merely an incident which demanded troops at the same time. Of all the statesmen of that era, of whatever nationality, Napoleon seems to have been the only one by whom Louisiana, as a province, was placed first in importance. The Americans, on the other hand, though striving to secure the Floridas, concentrated all the fire of their efforts upon the retention and perpetuation of their right to navigate the Mississippi. If nothing better could be secured, they were prepared to rest satisfied for a time if France would merely confirm the American rights stipulated in the treaty of 1795 with Spain. But the American ministers were instructed to spare no efforts, even to the lavish use of gold,* to secure the cession to the United States of West Florida, which carried with it, through the ownership of the left bank of the river, the right to navigate the Mississippi.

The arguments in the memorials of Mr. Livingston against the wisdom of the French possession of Louisiana were extremely clear, strong and convincing. Under the supposition that France occupied the country, he endeavored to show the enormous expense involved, the riotous dissatisfaction of the citizens of France, and the certainty of losing the province to Great Britain in the end. He indicated the probable, perhaps unavoidable contentions between France and the United States, should the latter not be ceded New Orleans and West Florida. He pointed out that Louisiana, in spite of any restraining acts of

* They were told to use a maximum of $2,000,000 to secure the cession of the two Floridas.

the United States government, was certain to be overrun with the contraband of the western settlers. Familiar as he was with the internal needs of France, knowing her weakness and her straits since the recent desperate war with Great Britain, and realizing and even predicting the political designs and the thirst for empire of Napoleon, he pointedly asked, "Has France such a superfluity of capital or people as will justify the establishment of new colonies?" He cited St. Domingo to illustrate the point that the American colonies were an enormous burden to the European nations—the squanderers of gold and the causes of war.

Active preparations for the French occupation were continued. In August, 1802, it was publicly known in Paris that the army intended for New Orleans aggregated three thousand men. But the differences of opinion over the limits of the territory embraced in the term Louisiana, occasioned protracted conferences between the diplomats of France and Spain and necessitated delay.. Mr. Livingston said. "I find all the old French maps mark the river Perdido as the boundary between Florida and Louisiana. . . . The difference relative to the Floridas is not settled. Spain insists that they are not ceded, and I have certain information that two days ago the minister of marine wrote to the minister of foreign affairs that without the Floridas there could be no Louisiana. . . . Yesterday I made several propsitions to the minister on the subject of Louisiana. He told me frankly that every offer was premature, and that the French government had determined to take possession first. . . . I have every reason to believe that the Floridas are not included. They will for the present at least remain in the hands of Spain. There never was a government in which less could be done by negotiation than here. There is no people, no legislature, no counsellors. One man is everything. He seldom asks advice and never hears it unasked. His ministers are mere clerks, and his legislature and counsellors parade officers. Though the sense of every reflecting man is against this wild expedition no one dares to tell him so. Were it not for the uneasiness it excites at home, it would give me none; for I am persuaded that the whole will end in a relinquishment of the country (West Florida) and transfer of the capital (New Orleans) to the United States. Their islands call for much more than France can ever furnish."*

* Diplomatic Correspondence.

On October 28, Mr. Livingston wrote that the army destined for Louisiana had met with a check, but that he could not learn the reason, unless it was the partial non-fulfillment by France of the considerations mentioned in the treaty of cession. He gave an interesting account of his interviews with Joseph Bonaparte, saying among other things: "He told me that he would receive with pleasure any communication I could make; but as he would not wish to appear to interfere with the minister, he begged that my communication might be informal and unsigned—exactly what I wished, because I should act with less danger of committing myself and of course with more freedom. He added, "You must not, however, suppose my power to serve you greater than it actually is; my brother is his own counsellor but we are good brothers; he hears me with pleasure, and as I have access to him at all times, I have an opportunity of turning his attention to a particular subject that might otherwise be passed over.' I then asked him whether he (Napoleon) had read my notes on Louisiana. He told me he had, and that he had conversed upon the subject with the first consul who, he found, had read them with attention, and that his brother had told him that he had nothing more at heart than to be upon the best terms with the United States. . . . I told him that the only cause of difference that might arise between us being the debt and Louisiana, I conceived that both might be happily and easily removed by making an exchange with Spain, returning them Louisiana, retaining New Orleans and giving the latter and the Floridas for our debt. He asked me whether we should prefer the Floridas to Louisiana.* I told him that there was no comparison in their value, but that we had no wish to extend our boundary across the Mississippi, or give color to the doubts that had been entertained of the moderation of our views, and that all we sought was security and not extension of territory. He replied that he believed any new cession on the part of Spain would be extremely difficult, inasmuch as Spain had parted with Trinidad and Louisiana with great reluctance."

On November 11, Mr. Livingston wrote that the difficulty over the consideration for Louisiana had been settled, and that orders

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* In asking this question, Joseph Bonaparte could not have meant by "Louisiana" the island of New Orleans only. He unquestionably meant the province, or all of the country west of the Mississippi. Attention is called to the fact that this was the first direct mention from any source of the transfer of the entire province to the United States. As Joseph reflected the views of Napoleon, it seems clear that the latter had already considered the possible cession of all of Louisiana to the United States.

had been issued for the expedition destined for Louisiana to embark—two demi-brigades. He did not know that the reason for the detention of the French fleet was the refusal of the king of Spain to ratify the cession of Louisiana to France. He further stated that the French government "will say nothing on the question of our limits, or our right under the Spanish treaty. . . . When asked what they meant to do as to our right of *entrepot*, General Victor (the commander of the expedition) spoke of the treaty (between the United States and Spain in 1795) as waste paper. . . . The sum voted for this service is two million and a half of francs; as to the rest they expect to compel the people to support the expenses of the government, which will be very heavy, as the number of the officers is great, . . . so that the first act of the new government will be the oppression of their people and of our commerce. I believe you may add to this an early attempt to corrupt our western people, and an early attempt upon the Natchez, which they consider as the rival of New Orleans." On the same date, Mr. Livingston insisted on an answer to his notes concerning Louisiana and was told by the French minister "that he was expressly instructed by the First Consul to give me the most positive assurances that the treaties we had entered into with Spain or them relative to Louisiana should be strictly observed." President Jefferson, in his message to congress December 15, 1802, said: "The cession of the Spanish province of Louisiana to France, which took place in the course of the later war, will, if carried into effect, make a change in the aspect of our foreign relations, which will doubtless have just weight in any deliberations of the legislature connected with that subject."*

The treaty retroceding Louisiana to France was signed October 1, 1800; but it was not ratified by the king of Spain until October 15, 1802. Immediately after the latter date, the French armament was fully organized and equipped. On October 16, 1802, the interdiction was promulgated at New Orleans, and two months later the inhabitants were forbidden to trade in any manner whatever with the Americans on the Mississippi. There was nothing left to the latter but the fruitless right of sailing up and down the river. When the king of Spain finally ratified the cession treaty, he exacted, at the suggestion of Godoy,

* Messages and Papers of the Presidents.

that Louisiana should never be alienated,* but should be returned to Spain in case the king of Etruria lost the power granted to him by Napoleon for Louisiana. The projects of the first consul for the colonization of Louisiana were not matured until late in the year 1801, when the peace with Great Britain, which arrived some months before the treaty, presented the opportunity of strengthening his domains, preparatory for another possible war. He at first demanded the entire Gulf coast from St. Marys on the Atlantic to the mouth of the Rio Grande, and would probably have obtained it all had it not been for Godoy, who was known as the Prince of Peace.

Mr. Jefferson had favored the revolution in France, admired the revolutionary leaders, particularly Napoleon, and accordingly did not readily suspect the designs of that conqueror upon Louisiana and Florida. His party had blamed the Federalists for the troubles with France in 1797-98; and so amid the clamor he chose a neutral course until the truth could no longer be denied. He then informed Napoleon that if France persisted in taking possession of Louisiana, it would cost her a war that would sweep her navy from the oceans. ** This threat was well sustained, as before stated, by what he wrote about the same time to Mr. Livingston at Paris: "From the moment that France takes New Orleans, we must marry ourselves to the British fleet and nation." The imminency of the danger to be apprehended from the French occupation of Louisiana was realized by both parties in America, but each had a different remedy for the disorder. The course pursued by Mr. Jefferson was eminently wise and statesmanlike, as subsequent events abundantly proved.

The American ministers to France and Spain, under the stimulus of the excitement at home, redoubled their efforts to effect a satisfactory settlement of the Louisiana problems. Mr. Livingston continued, through the kindness of Joseph Bonaparte, to reach the ears of Napoleon with his elaborate and convincing memorials. In December, 1802, he suggested in one of these memorials the cession of West Florida, the island of New Orleans, and all of Louisiana above the mouth of the river Arkansas to the United States; but the first consul seemed as immovable as ever in his views regarding Louisiana. Mr. Talleyrand said of him that he was *entete* (obstinate) with the project.

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* This was a secret agreement, the article concerning which seems never to have been made public.

** Writings of Thomas Jefferson; Ford.

† For the full text of these memorials, see American State Papers.

The French expedition to Louisiana was still delayed, upon what grounds it was wholly a matter of conjecture. The interdiction at New Orleans was not removed, the shipments of the people of the western country, many of whom were not apprised of the interdiction, were practically confiscated, and again the forcible possession of New Orleans and the enforcement of the right to navigate the Mississippi were openly and seriously threatened. In February, 1803, Mr. Livingston wrote that the Louisiana expedition was "ice-bound." At this time Messrs. Monroe and Pinckney were instructed, in case a cession should be obtained from Spain, to secure "an enlargement of our right of deposit at New Orleans, the establishment of suitable deposits at the mouths of the rivers passing from the United States through the Floridas, as well as the free navigation of those rivers by citizens of the United States."

As before stated, Mr. Livingston was successful, as early as December, 1802, in securing the attentive perusal of his memorials by Napoleon. This unofficial course was wholly agreeable to Mr. Livingston and to the Bonapartes. It committed neither, while informing both of the views of each other. If the august first consul was so wedded to the project of possessing and colonizing Louisiana, what did he find in the memorials of Mr. Livingston to interest him? The American used every argument in his power to dissuade him from taking possession of the province. He showed that Great Britain was certain to capture the country during the first war between them. He stated emphatically that the United States would maintain at any cost their rights stipulated in the treaty of 1795 to the navigation of the Mississippi and to a port of deposit on that stream. Every feature of the situation was critically examined and turned to the disadvantage of France, should she take possession of Louisiana. He argued for the cession of all of Louisiana above the mouth of the Arkansas to the United States, and explained how such a tract would serve as a protection to the French colonies below from British attacks down the Mississippi from Canada, and that the cession of this tract and West Florida would gain for France perpetual freedom of commerce on the Mississippi and its tributaries and the eternal friendship of the United States.

If the project of holding Louisiana was really dear to the heart of Napoleon, it follows that he naturally would want to learn everything in favor, and everything against, such retention. The arguments of Mr. Livingston against the retention

suggested to the alert mind of Napoleon the arguments in favor of it. Mr. Livingston, in speaking of the subject, wrote on February 18, 1803: "I can have a personal conference with him when I choose, having made arrangements for that purpose; but I defer it for two reasons: First, I have never yet had any specific instructions from you how to act or what to offer, and to meet merely to talk of the justice of our claims would be only to say ungracious truths and render a future conference more difficult; and second, because it is one of the traits of his character when he has once fully avowed a sentiment not easily to change it. I have, therefore, thought it best to address myself officially to the minister, and unofficially to the only man supposed to have any sort of influence over him. I have accordingly put into his hands some notes containing plain truth mixed with that species of personal attention which I know to be most pleasing."*

In his memorials, Mr. Livingston further endeavored to show that France would gain little advantage from the possession of the colony; that a successful attack by Great Britain could readily be made; that the loss of Louisiana meant also the loss of the French West Indies; that this conquest by Great Britain would give her the monopoly of the Gulf commerce; and that an alliance with the United States would avert such a misfortune. He then proposed the relinquishment to the United States of New Orleans and West Florida as far as the river Perdido and the territory lying west of the Mississippi and north of the mouth of the Arkansas. For this cession, he intimated that the United States were willing to pay a considerable sum of money. He further said: "These propositions, with certain accompaniments, were well received, and were some days under the First Consul's consideration, when it was thought a better bargain might be made on the spot (at Washington)." It seems that the first consul thought that by sending General Bernadotte to America to treat on the subject, he might obtain a better bargain than that offered by Mr. Livingston. In fact, the latter, not having been authorized, was unable to name the specific sum of money which the United States was willing to pay. As Napoleon needed money badly, the statement of the situation by Mr. Livingston had produced the desired effect, and the former was in a pliant and affable mood. It is not improbable to suppose that had Mr. Livingston, at this time, been fully

* Diplomatic Correspondence.

equipped with authority, he might have succeeded in securing from France and Spain respectively, New Orleans, West Florida, and all of Louisiana north of the mouth of the Arkansas. He said, "My plan is much relished by the person through whom it was proposed."*

He continued on the same date: "I told you that Parma would be offered for the Floridas, and that General Bournonville was sent to negotiate the business. It was never doubted a moment here that it would be effected; this I learned from Talleyrand and the Spanish ambassador. They (intimated) that the treaty would be signed the day the King returned from Barcelona; and their information accorded with that which Lord Whitworth had received. I learn now from the Spanish ambassador that the thing has met with some difficulty, as he says, not because of any aversion in the court to make the cession, but of some difference between the Prince of Peace (Godoy) and General Bournonville. I believe, however, that this is not the sole cause; but that Spain begins to see that, in receiving Parma, she will receive nothing; as it will be rendered subservient to another arrangement, as I hinted in my last. . . . France is fully impressed with the nullity of her possession in Louisiana unless she has some port in the Gulf. . . . I presume that she will, ultimately, find some way to cut the gordian knot; and I cannot but sincerely wish that you may have availed yourselves of the pretence Spain has given you to take possession. It will be best to treat with the subject in our hands; but, at all events, tell me what to do if they should go into the hands of France." He also stated that the armament destined for Louisiana would be detained in Holland until the last of March, and therefore could not reach New Orleans until June, and added, "a precious interval, of which you may think it prudent to avail yourselves."†

On this date, February 28, Mr. Livingston wrote that he had represented to the French minister of state the determination of the United States never to suffer their rights on the Mississippi to be impeded; but the minister had answered that the United States must consider the purchase of the country as out of the question, intimating that a sale was beneath the dignity of France.

When once Mr. Livingston had secured the attention of Bona-

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* The person to whom he refers was undoubtedly Joseph Bonaparte.

† Diplomatic Correspondence.

parte and his ministers, he argued that France, by ceding the territory asked for, would not only pay the debt due the United States, but would place the colony of Louisiana, should she conclude to retain it, in a much better situation than it would otherwise be. He said: "The United States have at present but two possible causes of difference with France—the debt due to her citizens and the possession of Louisiana." If France could possess Pensacola and the other ports to the east, she would command the Gulf. If in addition she possessed the free navigation of the Mississippi and the territory west of that river and south of the mouth of the Arkansas, she would have as large a colony as she would ever need for her surplus products and population. "Louisiana within these limits can support a population of fifteen millions of people." The United States specially desired West Florida in order to gain the mouths of the rivers running through the southern part of their territory. The situation of New Orleans was very inferior; a much better one for a large city was on the opposite side of the river at Fort Leon; the impending rupture between France and Great Britain would give the latter the occasion and the opportunity of attacking Louisiana; the possession of West Florida and of Louisiana above the Arkansas by the United States would place a barrier between Canada and Louisana and would take the edge off the British desire to wrest Louisana from France; the silence of the French government concerning the rights of the United States to the Mississippi and to an *entrepot* at New Orleans was causing intense uneasiness among the citizens of the United States; the act of the intendant at New Orleans was not justified by any reasonable construction of the treaty of 1795; "the United States will rather hazard their very existence than suffer the Mississippi to be shut against them; when the United States made their first treaty with Great Britain in 1783, their ministers were instructed, anxious as all were for peace on almost any terms, to sign no treaty without securing the free navigation of the Mississippi."

In a letter dated February 27, 1803, Mr. Livingston made a direct and open appeal to the first consul. He reviewed all the existing differences between France and the United States, and disclosed the fact that "a spirit of resentment has been manifested from one end of the Union to the other, and nothing but the interposition of the Spanish minister, the disavowal of the act (of interdiction) by the governor of New Orleans, and the extreme solicitude of the United States to avoid everything

that might have a tendency to interrupt the existing harmony . . . could have prevented an immediate recurrence to arms." He said that "if nothing should be done before the season of American shipment of produce down the Mississippi arrived, "the government will be compelled to follow the impulse of the people. And added, "should the agents of France, who are to take possession of the colony, continue the regulations, in the face of the treaty, which they may find established by the Spanish Intendant, a fatal blow will be struck at the future peace and harmony in both countries. . . . . As the moments are precious, and the United States will suffer extremely in their commerce, if the officers of France, who are directed to take possession, should not be explicitly instructed to respect the right of navigation and depot claimed by the United States, I must earnestly solicit some treaty, explanatory of the terms on which France has received the cession of Louisiana from Spain and recognizing the rights of the United States."

It was evident that, at this time, France was jealous of the amity existing between Great Britain and the Atlantic states; and that she entertained the belief that the possession of Louisiana and the control of the Mississippi were the keys by which the attachment of the western people to France might be secured and their separation from the states to the east might in the end be effected. Could the western people be drawn from the Union to the side and assistance of France, the trade of the Mississippi and hence the commercial supremacy of the Gulf, the great desideratum, would be the undoubted result of such a coalition. It was, therefore, the policy of France to develop this sentiment in the western people with the hope and possibly the expectation, that such a proposition, after her armament had arrived in New Orleans and taken possession, would tempt the western people to effect such a separation from the Atlantic states and such a union with French Louisiana.

The arguments and the diplomacy of Mr. Livingston did not blind Napoleon as to the true value of Louisiana to the growing and ambitious French republic. He knew that the possession of Louisiana and the Floridas, could they be held against other nations generally and Great Britain in particular, meant the absolute control of the commerce of the Mississippi and of the Gulf. Pamphlets were circulated in France declaring the province of Louisiana to be almost a paradise.* The possibili-

* The arguments of Mr. Livingston against the value of Louisiana, could not have had much weight with Napoleon.

ties of immense future advantage to France by holding the Louisiana country were freely discussed throughout the republic, and found no lack of expounders and supporters among that imaginative people. But Napoleon realized that without the Floridas, the navigation of the Mississippi could not be controlled by France. For this reason the consular government struggled to add them to the French possessions. Every inducement within the power of France was held attractively before the eyes of Spain; and there can be no doubt that, in the end, their possession would have passed to the French republic. The order of interdiction at New Orleans was made at the instigation of France, and was intended to test the temper of the western people. A large force of French troops at New Orleans, it was thought, would prevent any serious movement to open forcibly the Mississippi to western trade, would check the threatened advance of Great Britain upon New Orleans, and would result in great advantage to French commerce and prestige.

In all of this maneuvering for power, the wants, wishes and welfare of Spain were apparently wholly disregarded by the French republic. Louisiana, "agreeably to promise," was relinquished upon the mere asking. There was no doubt in the mind of Napoleon that the two Floridas would be secured by purchase. But the United States, unaware of the exact relations which chained Spain to France, instructed Mr. Pinckney to purchase the two Floridas from the former. In accordance with these instructions, Mr. Pinckney wrote as follows to the Spanish minister of state:

"I had the honor yesterday, to state to your excellency the anxiety of our government on the subject of possessing the territory on the east side of the Mississippi. The importance of this acquisition to them, for the purpose of securing to the citizens of one half of the United States the certain means of exporting their products has been so fully explained to your excellency in my letter written in March last and in subsequent conversations, that I need not at this time go again into the subject. Referring your excellency to them, I have now to say that the government of the United States, from many circumstances, as well as from the conduct of the intendant, feel themselves every day more convinced of the necessity of their having a permanent establishment on the Mississippi, convenient for the purposes of navigation and belonging solely to them. To obtain this they have authorized me to say that, should his Majesty be now inclined to sell to the United States his pos-

sessions on the east side of the Mississippi, or between that and the river Mobile, agreeably to the propositions enclosed, the United States will make to his Majesty, and I do now in their name make, the important offer of guarantying to him and his successors his dominions beyond the Mississippi. It is with his Majesty and his ministers to consider, for the reasons I had the honor to state in our conversation of the last evening, the immense importance of this offer to the Spanish crown, and to reflect how far it may be in the power of any other nation to make an offer so truly valuable and precious as this is to Spain—one that the United States would never have made, but from a conviction of the indispensable necessity of their possessing a suitable establishment on this river and which this territory can alone furnish."

The propositions to which he referred in this communication were as follows:

"1. The United States will purchase the possessions of his Catholic Majesty on the east side of the river Mississippi, for which they will pay —— dollars.*

"2. They will purchase these possessions, for which they will pay —— dollars; and, moreover, guaranty to his Majesty and his successors his possessions beyond the Mississippi.

"3. They will purchase the country between the rivers Mississippi and Mobile, belonging to his Majesty, and, also, places of deposite near the mouths of the other rivers passing from their territory into that of his Catholic Majesty, for which they will pay —— dollars, or enter into other obligations, which may be thought equivalent to the acquirement.

"4. If none of these propositions can be acceded to, they will then purchase certain tracts of country on the banks of the Mississippi and the other rivers passing from their territory into that of his Catholic Majesty, for which they will pay —— dollars, or enter into other obligations which may be thought equivalent to the acquirement."†

It is not improbable that, had not the government of France at that very date and for many years before been making every effort to secure the cession of the Floridas and been employing much stronger inducements and making much more alluring offers, the king of Spain would have been pleased to grant to the United States, in accordance with this plea, a sufficient

* This sum was a maximum of $10,000,000.

† American State Papers.

concession to have satisfied them. While it was known to the American minister that France desired the Floridas, he knew little of the intense pressure directed at the court of Spain by the first consul and designed to accomplish that object. But the offer of France was so much better than that of the United States, and the enmity of France was so much more to be dreaded by Spain, that the propositions of Mr. Pinckney, indefinite as they necessarily had to be, possessed no special nor superior attractions and were accordingly rejected. The following was the reply of Don Pedro Cervallos, secretary of state of Spain, April 7, 1802, to the above propositions of Mr. Pinckney:

"Sir:—I have communicated to his Majesty the propositions which your excellency made in the name of your government, in your official letter of the 24th of March last, respecting the cession of the two Floridas to the United States of America, by sale. His Majesty having been made well acquainted with everything advanced by your excellency in support of that idea, has commanded me to inform you, in reply, that his Majesty rejoices in every opportunity of strengthening the bonds of friendship with the United States of America, but that the subject in question being one of the utmost weight and importance, merits great circumspection before it can be determined. With regard to the request made by you in the same official letter that a mercantile agent of the United States should be permitted to reside at New Orleans, his Majesty does not accede to it, as it is prohibited by our laws of the Indies; and from the just consideration that, by making one example of that kind, the door would be opened for like demands on the part of other nations."*

This letter was regarded by Mr. Pinckney as a diplomatic rejection of his propositions; but as a matter of fact it may not have been so intended by the government of Spain. It seems more like a postponement of the American propositions. Spain was between two fires—those of France and the United States. The possession of Louisiana by France meant the terminaton in that province of her colonial policy of exclusion, and hence the idea of retaining the Floridas lost much of its glitter. Should she for any reason not cede them to France, there was nothing to prevent her from transferring them to the United States for a satisfactory consideration. She therefore temporized with the American propositions until the demands of France had been disposed of.

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* Diplomatic Correspondence.

In a communication dated March 2, 1803, the American secretary of state submitted a plan to the special envoys of the United States at Paris, Messrs. Livingston and Monroe, for the adjustment of the difficulties between the two countries. The following was the plan in full:*

"Article I. France cedes to the United States forever the territory east of the river Mississippi, comprehending the two Floridas, the island of New Orleans, and the islands lying to the north and east of that channel of the said river which is commonly called the South Pass, together with all such other islands as appertain to either West or East Florida; France reserving to herself all her territory on the west side of the Mississippi.

"Article II. The boundary between the territory ceded and reserved by France, shall be a continuation of that already defined above the thirty-first degree of north latitude, viz: the middle of the channel or bed of the river through the said South Pass to the sea. The navigation of the river Mississippi in its whole breadth from its source to the ocean, and in all its passages to and from the same shall be equally free and common to citizens of the United States and of the French republic.

"Article III. The vessels and citizens of the French republic may exercise commerce to and at such places on their respective shores below the said thirty-first degree of north latitude as may be allowed for that use by the parties to their respective citizens and vessels. And it is agreed that no other nation shall be allowed to exercise commerce to or at the same or any other place on either shore below the said thirty-first degree of latitude. For the term of ten years, to be computed from the exchange of the ratifications hereof, the citizens, vessels and merchandise of the United States and of France shall be subject to no other duties on their respective shores below the said thirty-first degree of latitude, than are imposed on their own citizens, vessels, and merchandises. No duty whatever shall, after the expiration of ten years, be laid on articles the growth or manufacture of the United States, or of the ceded territory, exported through the Mississippi in French vessels; so long as such articles so exported in vessels of the United States shall be exempt from duty; nor shall French vessels exporting such articles even afterward be subject to pay a higher duty than vessels of the United States.

"Article IV. The citizens of France may, for the term of ten

* American State Papers.

years, deposit their effects at New Orleans and at such other places on the ceded shore of the Mississippi, as are allowed for the commerce of the United States, without paying any other duty than a fair price for the hire of stores.

"Article V. In the ports and commerce of West and East Florida, France shall never be on a worse footing that the most favored nation; and for the term of ten years her vessels and merchandise shall be subject therein to no higher duties than are paid by those of the United States. Articles of the growth or manufacture of the United States and of the ceded territory, exported in French vessels from any port in the West or East Florida, shall be exempt from duty as long as vessels of the United States shall enjoy this exemption.

"Article VI. The United States, in consideration of the cession of territory made by this treaty, shall pay to France —— millions of livres tournois, in the manner following, viz: They shall pay —— millions of livres tournois immediately on the exchange of the ratifications hereof; they shall assume in such order of priority as the Government of the United States may approve the payment of claims which have been or may be acknowledged by the French republic to be due to American citizens, or so much thereof as, with the payment to be made on the exchange of ratifications, will not exceed the sum of ——; and in case a balance should remain due after such payment and assumption, the same shall be paid at the end of one year from the final liquidation of the claim hereby assumed, which shall be payable in three equal annual payments, the first of which is to take place one year after the exchange of ratifications, or they shall bear interest at the rate of six per cent per annum from the dates of such intended payments until they shall be discharged. All the above mentioned payments shall be made at the treasury of the United States and at the rate of one dollar and ten cents for every six livres tournois.

"Article VII. To incorporate the inhabitants of the hereby ceded territory with the citizens of the United States on an equal footing, being a provision which cannot now be made, it is to be expected, from the character and policy of the United States, that such incorporation will take place without unnecessary delay. In the meantime they shall be secure in their persons and property and in the free enjoyment of their religion."

Subjoined to this proposition were elaborate explanatory notes, presenting the reason for every provision from the standpoint of the United States. Much was left to the judgment and

discretion of the envoys. An interesting feature was the comparative estimate placed upon the value of different portions of the territory. The two Floridas were estimated at one-fourth the value of the whole island of New Orleans; and East Florida at one-half the value of West Florida. The envoys were instructed to evade, if possible, any and every stipulation concerning guaranties of territory to France. If the cession of the Floridas could not be obtained, they were instructed to secure, in any event, the rights of deposit and of navigation. They were also required to effect some arrangement that would in future obviate a repetition of such an unauthorized act as the interdiction of the deposits at New Orleans by a subordinate official.

On February 19, 1803, M. Talleyrand returned the following reply to the many memorials of Mr. Livingston regarding Louisiana. The pretended transfer of the whole subject to the United States was evidently a maneuver on the part of France to postpone a definite answer as long as possible: "The First Consul, always appreciating the motives which have induced you to insist on an explanation of the new relations which ought to exist between the two republics, has charged me to inform you that, aware of the solicitude, perhaps premature, but in reality natural and plausible, which the United States have manifested in this discussion, has come to the determination to send immediately to the United States a minister plenipotentiary, who will communicate on every point the information necessary to a final decision."* One reason why France desired delay was disclosed in Mr. Livingston's note of March 12, when he said: "With respect to a negotiation for Louisiana, I think nothing will be effected here. I have done everything I can through the Spanish ambassador to obstruct the bargain for the Floridas, and I have great hope that it will not be soon concluded. The ambassador tells me that the Consul often complains to him of the delay that business meets with; and while Spain keeps the Floridas, Louisiana will be considered here as an object of little moment, as they are absolutely without ports on the Gulf. . . . Mr. Madison has never told me whether he has received two little essays, calculated the one to raise our importance in the views of this government as a naval power and the other to disgust them with Louisiana, preparatory to our future negotiations. They were both read with consider-

* Diplomatic Correspondence.

able attention by the First Consul, having had them translated for that purpose." It thus was known to France that the possession of Louisiana without the Floridas would give them a power barren of the immense results they confidently and rightly conjectured would follow their additional occupancy of the Floridas. This was the principal reason why they wished to delay giving a definite answer to the United States; and in the meantime they crowded forward their negotiations with Spain for the Floridas.

But the French subterfuge to effect delay did not disconcert nor deceive Mr. Livingston, who continued his notes and memorials to the French minister and the first consul. He said on March 18: "You will see that, on the subject of New Orleans, the answer to my letter is very unsatisfactory. I at first intended to let the matter rest till Mr. Monroe arrived; but on reflection I dreaded the consequences of delay if France should take possession and continue the policy of Spain; and as the moment was critical and the time of Mr. Monroe's arrival uncertain, I sent in the enclosed note, and am doing all that I can to get a speedy and favorable answer." The "enclosed note" referred to was the strongest and severest ever sent in by Mr. Livingston. He had grown tired of the evasions and procrastinations, and made up his mind to press matters to a finality, if possible, before the arrival of Mr. Monroe. He said:*

"The First Consul has done me the honor through you to inform me that he proposes to send a minister to the United States, to acquire such information as he may deem necessary previous to his taking any measures relative to the situation in which the acquisition of Louisiana will place France with respect to the United States. If, sir, the question related to the formation of a new treaty, I should find no objection to this measure. On the contrary, I should readily acquiesce in it, as that which would be best calculated to render the treaty mutually advantageous. But, sir, it is not a new treaty for which we now press, (though one mutually advantageous might be made,) but the recognition of an old one, by which the United States have acquired rights that no change in the circumstances of the country obliges them to relinquish, and which they never will relinquish but with their political existence. By their treaty with Spain their right to the navigation of the Mississippi is recognized and a right of depot granted with a provis-

*American State Papers.

ion on the part of the King of Spain to revoke this right within three years he found it prejudicial to his interests, in which case he is to assign another equivalent establishment. The King of Spain has never revoked that right; but after having made the experiment of its effects upon his interests for three years he has continued it. The United States have, by this continuance, acquired a permanent and irrevocable right to a depot at New Orleans; nor can that right now be called in question, either by Spain or by any other nation to whom she may transfer her title. Even the assignment of another equivalent establishment cannot at this day be forced upon the United States without their consent. The time allowed to Spain has passed, and she has preferred to have the depot at New Orleans to placing it elsewhere; and I will venture to say that in so doing she has acted wisely. For New Orleans derives its whole value from its being the market for American produce and their principal port of entry; and if this consideration was important to Spain it is infinitely more so to France, the produce of whose agriculture and manufactures will find a ready exchange for the raw material of the United States. Under these circumstances, at the very moment that Spain is about to relinquish the possession of that country to France, she violates her treaty without any apparent interest, and leaves the country with a stain upon her character."

This sententious summary was followed by a vivid picture of the situation of the western people, with the alternative before them of having their crops rot on their hands or of having them confiscated at New Orleans. The fact was forcibly called to the attention of France that it was with the greatest difficulty that the western people had been restrained by the government of the United States from forcibly maintaining their rights on the Mississippi. The minister ended with a powerful appeal to the first consul for an immediate admission of the rights of the United States on the Mississippi as stipulated in the treaty of 1795. According to Mr. Livingston, the appointment of Mr. Monroe as a special envoy was employed by France as a pretext to delay still longer a definite answer to his notes. He said on March 24, "The French minister told me that an answer was prepared (to Mr. Livingston's notes), and that everything should be arranged; and I have no doubt the answer contained all those assurances which I have been so long soliciting. Unfortunately, dispatches arrived at that moment from Mr. Pichon, informing them that the appointment of Mr. Monroe had tran-

quilized everything. Conceiving then that they might safely wait his arrival, they determined to see whether the storm would not blow over, in which case they will treat to more advantage. They accordingly substituted for the first note, which as the minister told me arranged everything, the enclosed note which contains nothing." He added on the same date, "Florida is not yet ceded, nor as I hope very likely to be so. The armament in Holland, designed for Louisiana, is stopped for the present in consequence of the state of things here."

Late in March and early in April Mr. Livingston sent many strong notes, essays and letters to M. Talleyrand, even at the risk of becoming importunate, urging the consideration and settlement of the Louisiana questions; and seemed to think, in his letter dated April 11, that he had gained ground with all except the first consul. As a matter of fact, he had, on the contrary, yet unknown to himself, gained ground with the first consul, but not with the French statesmen generally. He wrote, "I endeavored to convince the Government that the United States would avail themselves of the breach of the treaty (of 1795) to possess themselves of New Orleans and the Floridas; that Great Britain would never suffer Spain to grant the Floridas to France, even were she so disposed, but would immediately seize upon them as soon as the transfer was made; that, without the Floridas, Louisiana would be indefensible, as it possesses not one port even for frigates; and I showed the effect of suffering that important country to fall into the hands of the British, both as it affected our country and the naval force of all Europe. These reasons, with the probability of war (between France and Great Britain), have had, I trust, the desired effect."*

During the last half of March and the first half of April, 1803, both France and Great Britain continued active preparations for war, and at the same time their respective ministers, in perfunctory communications, endeavored to stay the approaching storm. The means of attack and defense were closely studied, and the weaknesses of each were, so far as possible, strengthened or wholly discarded. It was manifest to Bonaparte that the unquestionable superiority of the English navy placed all of the French colonial possessions in the severest jeopardy and rendered their loss to France an almost certain result of the war. It was clear that to hold Louisiana against the prowess of the English arms, meant the despatch to New Orleans of a much larger armament than was originally intended and a corresponding weakening of the

* American State Papers.

French continental battalions. While the relinquishment of Louisiana was to be sincerely regretted, no other reasonable course seemed open to France. If the province were returned to Spain little or no ready money would be realized. Its retention by France meant its almost certain reduction and conquest by Great Britain. There was no other course: It must be sold at once to the United States for as high a price as possible. This was unquestionably the conclusion of Bonaparte and the logic of the intricate and perilous situation. It is reasonable to conclude therefore, that, if the prospect of inevitable war with England was the cause of Bonaparte's decision to sell Louisiana to the United States, the arguments and importunities of Mr. Livingston disclosed the opportunity of disposing of it, before it was too late, to the pecuniary advantage of France at a time when money was of the first importance and delay was extremely dangerous.

It was seen by Bonaparte that when the war should once begin, the United States, unless their claims under the treaty of 1795 were acknowledged by France, would no doubt take advantage of the opportunity to occupy New Orleans and the Floridas. The western people, in fact, were on the point of taking such a course at that moment regardless of the probable European war or the protests of their government. Many of them thought that the occupancy by France meant the extinguishment of their rights on the Mississippi, and would be only too glad of the chance to take the country at small cost while France was engaged elsewhere. Unless the claims of the United States were speedily acknowledged, war with Great Britain meant war also with the United States, and therefore the certain loss of Louisiana, probably to the latter. But the acknowledgment of the claims of the United States, and the failure to secure the Floridas from Spain, would render the possession of Louisiana by France barren of the important and immensely valuable results expected in the future. Spain would not willingly surrender the Floridas; the United States would in any event fight for their rights of navigation and deposit. The only reasonable course left to France therefore was to sell Louisiana to the United States.

But Bonaparte did not sell Louisiana until after all hope of peace with Great Britain had been abandoned. It is doubtful whether he came to the undeviating conclusion to sell it much before the date of actual sale. Prizing it as he did and building high and gilded hopes on it for the future, he delayed entertaining the thought of sale until circumstances indicated the wisdom, if not the necessity, of its immediate relinquishment. He

then met with a storm of protest from nearly all around him, even from his two brothers, Joseph and Lucien. But when once his course was clear and his mind made up, he brooked no interference and listened patiently to no remonstrance even from his brothers. It is idle to invest him, as some writers do, with supernatural qualities. He was an ambitious, selfish, egotistical, dominant, alert and brilliant man, broad of comprehension, unerring in the power to blend forces for the accomplishment of an object, and endowed with a will and personality that commanded obedience, if not homage. He made up his mind only upon strong evidences, and tenaciously clung to his conclusions, knowing their accuracy and their cost in mental acumen. But when a conclusion was proved to be wrong, or for any sufficient reason untenable, the mental penetration that enabled him to see his error, also pointed out to his judgment the means for its correction. It was thus that, although Louisiana was dear to his heart, he made up his mind to abandon it at the moment he saw the unwisdom of its retention. That moment arrived when he abandoned the last hope of peace. The transfer was made so speedily that the American envoys were still dazed and astonished for days after the treaty was signed. It was Napoleon's way—a profound yet impetuous decisiveness that won him all his battles and his consequent imperishable fame.

CHAPTER IV

The Interdiction of the Deposits, 1802

AFTER the danger of war with Spain in 1797 had blown over, and the Spanish troops had evacuated Chickasaw Bluffs, Walnut Hills and Natchez, and the survey of the thirty-first parallel had settled all trouble in that quarter, the intercourse between the French and Spanish inhabitant of Louisiana and West Florida and the Americans from "up the river" grew pleasant, great in extent and mutually profitable. The liberal stipulations contained in the treaty of 1795, granting the United States a place of deposit for produce and goods in New Orleans, were faithfully carried out by the Spanish authorities. Under this desirable order of affairs, the trade of New Orleans grew to an enormous extent considering the sparcity of inhabitants, and the Ohio valley quadrupled in population and prosperity. Flour, iron products, grain, pork, beef, tobacco, cotton, etc., found temporary lodgment in New Orleans before being sent to every quarter of the globe. The enterprising Anglo-Saxon from "up the river" so conducted his commercial transactions that he soon managed practically to command the entire trade of that already famous port. What he of the river did not succeed in securing, was largely monopolized by the American vessels passing between New Orleans and the cities of the Atlantic coast—Baltimore, Philadelphia, New York, Boston, etc.

But this result was an innovation in the immemorial policy of colonial exclusion of the Spanish government, and almost completely obliterated certain revenues which were sacred to the Spanish sovereign, by flooding all of Louisiana with the contraband (forbidden) of the United States. This finality had been anticipated and dreaded by the Spanish ministry. The proximity of the Western states to Louisiana, the cheapness with which

the goods sent down the river could be produced, and the ease with which they could be placed in the hands of the Spanish consumer, enabled the industrious Americans to undersell Spain throughout the whole of Louisiana. The people readily bought from the American flatboats rather than from the Spanish vessels, because the prices of the former for the same articles were lower and usually the products were fresher and better. The Spanish duty on contraband was easily evaded by smuggling; and on staple articles, there being no duty, the Spanish producers were again undersold, owing mainly to the astonishing fertility of the American soil, and hence to the immense crops that were raised in the Ohio valley. The result was to place in the pockets of the Americans the revenues which had been dedicated from time immemorial to the Spanish crown. Complaints in regard to this state of things were made as early as 1798, and continued to grow in volume and severity during the next two years.

In the spring of 1801 it became known in New Orleans that Louisiana had been retroceded to France, after which the complaints largely ceased, because the Spanish crown demands for revenues were no longer made or heard. Early in 1802 it became known in New Orleans that French officials and troops were soon to be sent to Louisiana to take formal possession of the posts, properties and revenues. The reasons for hostility to the American trade were thus removed by the transfer of ownership, because the colonial policies of France and Spain were in many respects essentially unlike. It was at once realized that the commercial policy of France would be a dominant factor in Louisiana affairs, because France at this time was extremely pressed for ready money and the resumption of war with England was a probability of the near future. It was realized that the authority of Spain over Louisiana had passed to the republic of France, and that the citizens in that province would be required to contribute their share to the advancement of the French standard under the guidance of the Great Napoleon. While, therefore, Spanish authority in New Orleans had not yet been formally relinquished to France, the sovereignty of the latter over the future destiny of the province was distinctly recognized and in many things observed. Many of the citizens were French—probably as many as were Spanish. Under the benign and righteous influence of the "Family Compact" they had learned to dwell together in unity; but the French had not forgotten Governor O'Reilly nor the joys of living under the lilies of France. Such were ready to

welcome the old glory of French military trappings, splendor, and heroics.

The scheme of Napoleon for colonizing Louisiana kindled the liveliest sentiments of pleasure and pride in the breasts of the French residents. The New France that was thus to be erected west of the Mississippi, with New Orleans for its capital and metropolis, was a theme to conjure by; and dreams of the grandeur to be were not lacking among the romantic and emotional inhabitants. The belief was freely and openly confessed at New Orleans in 1801 and 1802, that the citizens of the western portion of the United States, because it would be made immensely to their advantage to do so, would voluntarily separate from the Atlantic states and apply for admission to the new republic or empire that was to be erected over the ashes of wigwams and the graves of their savage possessors. Already the authority exercised in the name of Spain was largely perfunctory; and the star of Napoleon, even in New Orleans in 1802, attained a purity and brilliancy which it never acquired amid the intrigues and jealousies of the Parisian consulate. The distance that lent enchantment to the view hid from ear and eye the dreadful din and bloody pictures of the European battlefields. Here the rhapsodical features shone out like a will-of-the-wisp, but the fitful light brought peace and content.

French influences were already at work in Louisiana. The name of Napoleon was on every tongue and every breeze. It was well known at New Orleans that the government of the United States was hostile to the French occupancy of the province, primarily because the ambition of Napoleon to found a new and dazzling empire or republic in Louisiana indicated if it did not portend the threatened division of the Union. President Jefferson wrote to Paris that the possession of Louisiana by France meant probable war between that country and the United States; in which case Great Britain and the latter would join forces on land and sea. To what extent this prediction would prove true became a matter of much solicitude to Napoleon, who read with intense interest the elaborate communications of Mr. Livingston, describing the views of the United States, particularly those of the western inhabitants, in regard to the acquisition of Louisiana by the French republic. From Mr. Livingston it was learned by Napoleon that the navigation of the Mississippi and the right of deposit at New Orleans or some other suitable place, were prized so highly by the western people and were so necessary to their prosperity,

that a war of extinction would be waged by them before they would consent to their relinquishment. With this view of the case, it is surely not necessary to state that Napoleon saw his opportunity to strengthen wonderfully his American colonial domain. He saw that above all things, should the New France which he had projected be established, the acquisition of the Western states was the most to be desired; because it meant the absolute and exclusive domination of the Mississippi river by France, the perfection of the Napoleonic colonial scheme in America, and the certain removal of all future entanglements with the United States. What, then, was the first thing that should be done? Plainly to ascertain the temper and sentiments of the people living between the Alleghany mountains and the Mississippi river. How could that be accomplished? By obstructing their commercial privileges at New Orleans, as had been done previously by Spain prior to the treaty of 1795. And fortunately for Napoleon, inasmuch as the province of Louisiana, though owned by France, had not yet been delivered to her, the deposits of the western people in New Orleans could be stopped at the instigation of the Grench government and the wrath of the Americans be diverted to Spain, which yet held outward possession. While it is not certain that the French government issued such an order to the intendant at New Orleans, the preponderance of evidence implies that the interdiction of the deposits in October, 1802, was occasioned by the indirect demand of some person high in authority in France. But however occasioned, the intendant issued the following writ of interdiction:*

"As long as it was necessary to tolerate the commerce of neutrals which is now abolished, it would have been prejudicial to the province, had the Intendant, in compliance with his duty, prevented the deposit in this city, of the property of the Americans, granted to them by the twenty-second article of the treay of friendship, limits and navigation, of the 27th of October, 1795, during the limited term of three years. With the publication of the ratification of the treaty of Amiens, and the re-establishment of the communication between the English and Spanish subjects, that inconvenience has ceased. Considering that the twenty-second article of the said treaty takes from me the power of continuing the toleration which necessity required; since after the fulfillment of the said term, this ministry can no longer consent to

* American State Papers.

it without an express order of the King: therefore, and without prejudice to the exportation of what has been admitted in proper time, I order, that from this date, the privilege which the Americans had of importing and depositing their merchandise and effects in this capital, shall be interdicted: and, that the foregoing may be publicly known, and that nobody may allege ignorance, I order it to be published in the usual places, copies to be posted up in the public *sitioes;* and that the necessary notice be given of it to the officers of finance, the administrator of rents, and otherwise, as may be necessary. The present being given under my hand, and countersigned by the underwritten notary of finance *pro tempore,* in the office of Intendency of New Orleans, October 16, 1802.

"JUAN VENTURA MORALES,

"By order of the Intendant:

"PEDRO PEDESCLAUX."

When the news of the interdiction at New Orleans reached Mr. Pinckney at Madrid, he protested vigorously, and was answered that the Spanish government had issued no such order. He thereupon wrote to the Spanish minister of state the following letter: "It is with particular pleasure I received from Your Excellency the information that this order of the Intendant had been issued by him without the knowledge of His Majesty or his Government, and that orders should be immediately sent to New Orleans, to the Intendant and proper authorities there, to regulate the commerce and intercourse of the citizens of the United States in that port by the treaty of 1795, and to place the same on the footing it had been from the foundation of that treaty to the issuing of the Intendant's order."

The issuance of the interdiction caused great excitement at all the American settlements on the Mississippi and its branches to their uttermost ramifications. W. C. C. Claiborne, governor of Mississippi territory, in a letter dated October 28, 1802, asked Manual de Salcedo, governor of the province of Louisiana, "whether, since the deposit at New Orleans had been interdicted 'an equivalent establishment' had been assigned at another place on the Mississippi, according to treaty, for the deposit of American merchandise and effects." Governor Garrard of Kentucky in a letter to President Jefferson said. "The citizens of this state are very much alarmed and agitated, as this measure of the Spanish government will, (if not altered) at one blow, cut up the present and future prosperity of their best interests by the roots." Mr.

Madison wrote to Mr. Pinckney on November 27, that "this proceeding is so direct and palpable a violation of the treaty of 1795 that in candor it is to be imputed rather to the Intendant solely than to instructions of his Government. The Spanish minister takes pains to impress this belief. . . . But from whatever source the measure may have proceeded, the President expects that the Spanish Government will neither lose a moment in countermanding it, nor hesitate to repair every damage which may result from it. You are aware of the sensibility of our western citizens to such an occurrence. This sensibility is justified by the interest they have at stake. The Mississippi is to them everything."* The legislature of Kentucky passed a memorial to congress, complaining of the act of the Spanish authorities. Meetings of indignant citizens were held at many places throughout the west to protest against the act and ask for the removal of the interdiction.

The whole Mississippi situation, so far as it was known at that date, was laid bare in congress in February, 1803, by a protracted discussion which continued through several days. In the senate the discussion was occasioned by resolutions introduced by Mr. Ross of Pennsylvania. He took a strong position which meant the forcible occupation of New Orleans and the maintenance of American rights with militia and the regular army. Among other things he said:†

"To the free navigation of that river we had an undoubted right from nature, and from the position of our western country. This right and the right of deposit in the Island of New Orleans had been solemnly acknowledged and fixed by treaty in 1795. That treaty had been in actual operation and execution for many years; and now without any pretense of abuse or violation on our part, the officers of the Spanish Government deny the right, refuse the place of deposit, and add the most offensive of all insults, by forbidding us from landing on any part of their territory and shutting us out as a common nuisance. By whom has this outrage been offered? By those who have constantly acknowledged our right, and now tell us that they are no longer owners of the country. They have given it away, and because they have no longer a right themselves, therefore they turn us out who have an undoubted right. Such an insult, such unprovoked malignity of conduct, no nation but this would affect to mistake. And yet we

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* American State Papers.

† Annals of Congress.

do not only hesitate as to the course which interest and honor call us to pursue, but we bear it with patience, tameness and apparent unconcern. . . . The calamity lights upon all those who live upon the western waters—a half million cut off from market."

Continuing, he said, "Look at the memorial from the legislature of the Mississippi territory now on your table:* that speaks a language and displays a spirit not to be mistaken. Their lives and fortunes are pledged to support you. The same may with equal truth be asserted of Kentucky, Tennessee and the western people of Virginia and Pennsylvania. Is this a spirit to be repressed or put asleep by negotiation? If you suffer it to be extinguished, can you recall it in the hour of distress when you want it? . . Suppose they (the western people) do go and do chase away the present oppressors and in the end are overpowered and defeated by a stronger foe than the present feeble possessors. They will never return to you, for you cannot protect them. They will make the best compromise they can with the Power commanding the mouth of the river, who in effect has thereby the command of their fortunes. Will such a bargain be of light or trivial moment to the Atlantic States? Bonaparte will then say to you, my French West India colonies and those of my allies can be supplied from my colony of Louisiana with flour, pork, beef, lumber and any other necessary. These articles can be carried by my own ships, navigated by my own sailors. If you on the Atlantic coast wish to trade with my colonies in those articles, you must pay fifteen or twenty per cent of an impost. We want no further supplies from you, and revenue to France must be the consideration of all future intercourse. What will you say to this? It will be vain to address your western brethren, and complain your commerce is ruined, your revenue dwindles, and your condition is desperate. They will reply that you came not to their assistance when you might have saved them."

Having been interrupted in the course of his remarks, he resumed two days later and, among other things, said, "I have urged the importance of our rights in the navigation of the Mississippi, founded in nature and acknowledged by compact. This is the great and only highway of commerce from the western country to the ocean. The Spaniards after a long execution of this treaty, have now flagrantly violated it and shut us out from all intercourse and from the right of deposit: they have plundered

* This was a protest against the interdiction, and an intimation that Mississippi territory was ready to assist in its abrogation.

our citizens upon the ocean: carried our vessels into their ports and condemned them without the semblance of a trial. Our seamen have been cast into prison and our merchants ruined. Thus assailed upon the ocean and upon the land by a long course of oppression and hostility without provocation and without apology, I know of but one course we can take which promises complete redress of our wrongs. Experience has proved that the compact is no security; the Spaniards either cannot or will not observe their treaty. If they are under the direction of a stronger Power (France was referred to),* who will not permit them to adhere to their stipulations, or if they of their own accord inflict these indignities under a belief that we dare not resent them, it is equally incumbent upon us to act without farther delay. The aggressors are heaping indignity upon you at your own door, at the very borders of your territory, and tell you at the same time they have no right to the country from whence they exclude you. If they act thus without right, why not enforce yours by taking possession? Will you submit to be taken by the neck and kicked out without a struggle? Is there not spirit enough in the country to repel and punish such unheard of insolence? Is not the magnitude of the interest at stake such as to warrant the most vigorous and decisive course which can express public indignation? Go then, take the guardianship of our rights upon yourselves, trust it no longer to those who have so grossly abused the power they have had over it; reinstate yourselves in the possession of that which has been wrested from you and withheld by faithless men, who confess themselves no longer the owners of the country over which they are exercising these acts of injustice and outrage. Negotiation may perhaps, be wise; but this is the effectual measure to support it. When it is seen that you have determined to support your just demands with force, that you have already taken into your hands an ample pledge for future security and good behavior, your ambassador will be respected and attended to. But what weight will his remonstrance have in any country of Europe, when they hear of no military preparations to vindicate your pretensions, when they learn that you have been chased out of a possession confessedly your right, that you have been insultingly told, Begone, you shall not buy, you shall not sell, you are such a nuisance we will have no intercourse with you? . . . It may be said that the Executive is pursuing another and very different course. The Executive will certainly pursue the course desig-

* This reference to France should be particularly noted.

nated by the legislature. To the congress has been confided the power of deciding what shall be done in all cases of hostility by foreign Powers. There can be no doubt that by the law of nature and nations we are clearly authorized to employ force for our redress in such a case as this; that we have a just right to take such measures as will prevent a repetition of the mischief and afford ample security for the future quiet enjoyment of the violated right. If we leave it entirely to the Executive he can only employ negotiation as being the sole means in his power. . . . What will honorable gentlemen say on their return home to a people pressed by the heavy hand of this calamity when they inquire, What has been done? What are our hopes? How long will the obstruction continue? You answer: We have provided a remedy but it is secret (the debates and proceedings on this question were kept secret by congress). We are not allowed to speak of it there, much less here. It was only committed to confidential men in whispers, with closed doors; but by and by you will see it operate like enchantment; it is a sovereign balsam which will heal your wounded honor; it is a potent spell, or a kind of patent medicine which will extinguish and forever put at rest the devouring spirit which has desolated so many nations of Europe. . . . This idle talk may amuse children. But the men of that country will not be satisfied. They will tell you that they expected better things of you, that their confidence has been misplaced, and will not wait the operation of your newly invented drugs; they will go and redress themselves. I say also let us go and redress ourselves; you will have the whole nation with you. On no question since the Declaration of Independence has the nation been so unanimous as upon this. . . . As to myself or my friend no agency is wished except that of uniting with you in rousing the spirit and calling out the resources of the country, to protect itself against serious aggression and the total suebjection and loss of the western country. If you act boldly and promptly, with perfect unanimity, you will have no war, you will meet with no resistance. If the Spaniards resist you in taking possession of what by treaty they have acknowledged to be yours and what they now confess does not belong to them, the war certainly begins with them. Under all these circumstances, with these offers of support, can gentlemen doubt, can they venture to cry, Peace, peace, when there is no peace, but a sword? I entreat gentlemen to consider my resolution with candor. My intentions are solely the attainment of an object the loss of which will destroy the country where I reside and hazard the Union itself. If gentlemen think

the proposed means inadequate, I will agree to enlarge them with cheerfulness; all I wish is that effectual means be voted and employed in this golden moment, which if lost never will return." He concluded by introducing the following resolution:*

"*Resolved,* That the United States have an indisputable right to the free navigation of the river Mississippi, and to a convenient place of deposit for their produce and merchandise in the Island of New Orleans; that the late infraction of such, their unquestionable right, is an aggression hostile to their honor and interest; that it does not consort with the dignity or safety of this Union to hold a right so important by a tenure so uncertain; that it materially concerns such of the American citizens as dwell on the western waters, and is essential to the union, strength and prosperity of these States, that they obtain complete security for the full and peaceable enjoyment of such their absolute right; that the President be authorized to take immediate possession of such place or places in the said island, or the adjacent territories as he may deem fit and convenient for the purposes aforesaid, and to adopt such other measures for obtaining that complete security as to him in his wisdom shall seem meet; that he be authorized to call into actual service any number of the militia of the States of South Carolina, Georgia, Ohio, Kentucky, Tennessee, or of the Mississippi Territory, which he may think proper, not exceeding fifty thousand, and to employ them, together with the military and naval forces of the Union, for effecting the objects above mentioned; that the sum of five millions of dollars be appropriated to the carrying into effect the foregoing resolutions, and that the whole or any part of that sum be paid or applied, on warrants drawn in pursuance of such directions as the President may from time to time think proper to give to the Secretary of the Treasury."

In spite of the secrecy enjoined upon the members of congress, the substance of the proceedings became known generally throughout the country and occasioned all shades of opinion among the partisans. The western people were highly pleased with the resolutions of Mr. Ross. They, as well as the substance of his speech, became known in every court of Europe, and did not a little to apprise other nations that it was possible to go too far in presuming that the United States would not defend its rights and its sovereignty. The resolutions were employed to excellent effect by Mr. Livingston in his negotiations with France to secure

* Annals of Congress.

the cession of New Orleans, the Floridas, or portions of Louisiana to the United States. They were shown to Napoleon, Talleyrand, and others, and the point was made that the United States would never relinquish its right to the navigation of the Mississippi but "with their political existence." They were really the strongest argument used by Mr. Livingston to convince the French government that the refusal to revoke the interdiction of the depot meant war with the United States.* But as his course was precisely what Napoleon designed, and what probably had resulted already from his indirect order to the intendant, the effect of the resolutions and the speech of Mr. Ross must have been strong with the first consul. He became satisfied that if the western people would undoubtedly go to war to maintain their right to the navigation of the Mississippi, they would not hesitate to separate themselves from the Atlantic states and attach themselves to New France (Louisiana) to gain that right, rather than enter into a war with the powerful French republic in an attempt to obtain the same object. Great Britain was pleased with the resolutions because they indicated that the United States would oppose the possession of the mouth of the Mississippi by France. Spain would no doubt support any position which France might assume. These were the flames lighted over the world by the resolutions. Every power that had an interest, direct or indirect, in the ownership of the mouth of the Mississippi, reflected seriously on these proceedings of congress.

During the progress of the debate on the resolutions of Mr. Ross, there was read by Mr. White of Delaware the following paper:†

"*Advertisement.* Under date of the 16th instant (December), the Intendant General of these provinces tells me that the citizens of the United States of America can have no commerce with his Majesty's subjects—they only having the free navigation of the river for the exportation of the fruits and produce of their establishments to foreign countries, and the importation of what they may want from them. As such I charge you so far as respects you to be zealous and vigilant with particular care that the inhabitants neither purchase or sell anything to the shipping, flat-bottomed boats, barges, or any other smaller vessels that may go along the river destined for the American possessions or pro-

* American State Papers.

† Annals of Congress.

ceeding from them, that they shall be informed of it, for their due compliance of the same."

"Baton Rouge, Dec. 22, 1802." "CARLOS DE GRANDPRE."

This order was commented on in the severest terms by many of the senators. Mr. White said, "These are the orders that have been issued by the Intendant General to every district of the Spanish provinces, prohibiting the subjects of his Catholic Majesty from having any commerce, dealing, intercourse or communion whatsoever with the citizens of the United States; excluding us from their shores for the distance of two hundred and seventy miles; treating us like a nation of pirates or a banditti of robbers, who they feared to trust in their country. . . . It has been given out to the world that the Intendant General of the Spanish provinces was responsible for this act; that the Spanish minister had issued orders for the speedy adjustment of these difficulties. Gentlemen may find when too late that this is a mere piece of diplomatic policy intended only to amuse them. If they had taken the trouble they might have been informed that the Spanish minister near this Government has no control at New Orleans; that the Intendant General is like himself an immediate officer of the Crown and responsible only there for his conduct. If the Spanish minister has interfered, it could only have been by the entreaties of men in power, as a mere mediator, to beg of the Intendant General of New Orleans justice and peace on behalf of the people of the United States. Are honorable gentlemen prepared to accept peace on such terms? And it seems that even these supplicating advances are likely to avail us nothing. By accounts very lately received from New Orleans by a private letter which I have seen since these resolutions were submitted to the senate, the Intendant General has expressed much displeasure at the interference of the Spanish minister, stating that it was not within his duty or his province, and that he, the Intendant, acted not under Spanish but French orders.* As to the closing of the port of New Orleans against our citizens, the man who can now doubt, after viewing all the accompanying circumstances, that it was the deliberate act of the Spanish or French Government, must have locked up his mind against truth and conviction and be determined to discredit even the evidence of his own senses. . . . If it should be said that this important question will soon be found in other hands; that whenever we

* This statement should be particularly noted.

may have to negotiate on this subject, either in the cabinet or the field, it will not be with His Catholic Majesty, but with the First Consul; not with a King, but with the King of Kings, I answer that in these insults to our national dignity we at present know no Power but Spain. Whatever agency Bonaparte may have had in this business, he has been concealed from our view.* It is Spain that has violated her plighted faith; it is Spain that has trampled upon the dearest interests of the United States and she alone is responsible to us for these outrages. . . . We should now view her as our open enemy, as having declared war against us, and do justice to ourselves. We can never have a permanent place on our western waters, till we possess ourselves of New Orleans and such other positions as may be necessary to give us the complete and absolute command of the navigation of the Mississippi. We have now such an opportunity of accomplishing this important object as may not be presented again in centuries, and every justification that could be wished for availing ourselves of the opportunity. Spain has dared us to the trial and now bids us defiance. . . . Though not officially informed, we know that the Spanish Provinces on the Mississippi have been ceded to the French and that they will as soon as possible take possession of them. What may we then expect? . . . We shall be hailed by the vigilant and alert French grenadier, and in the defenceless garrison that would now surrender at our approach, we shall see unfurled the standards that have waved triumphant in Italy, surrounded by impregnable ramparts, and defended by the disciplined veterans of Egypt. . . . These observations are urged upon the supposition that it is the power of the Government to restrain the impetuosity of the western people and to prevent their doing justice to themselves which by the by I beg to be understood as not believing, but expressly the contrary. They know their own strength; they know the feebleness of the enemy; they know the infinite importance of the stake; they feel the insults and injuries they have received; they are now all alive on the subject, and I believe will not submit even for the approaching season to their present ruinous and humiliating situation. You might as well pretend to dam up the mouth of the Mississippi, as to expect they will be prevented from descending it. Without the free use of the river and the necessary advantage of deposit below our line, their fertile country is not worth possession;

* The belief that France was responsible for the interdiction was not a partisan view; but was entertained by many men of both parties.

these are rights not only guaranteed to them by treaty, but due them from this Government, and they will enforce them, with or without your authority. . . . Under your auspices and with the promises of your protection, at the hazard of their lives, they explored and settled a wilderness, the lonely desert they have transformed into cultivated fields. They are our fellow-citizens, our friends and our brothers, and we are bound by every obligation of good faith and every sentiment of honor not to abandon them for a moment. . . . Let Bonaparte once take possession of the mouth of the Mississippi, and we shall have a war indeed; nothing but the length of our swords and the best blood of our citizens will ever make it ours; his object is universal dominion; and the hero of Italy, the military despot of France, a man whose towering ambition bestrides the world, whose will is now the law of nations, with fifty millions of people and the resources of Europe at his commond, will be a foe not easily vanquished; and I repeat, sir, only let him set his foot on that shore, let him but plant a single standard there, and he will never yield it but by inches to superior force. He knows well the value of the position; he knows that it must become one of the first in the world, and that it now offers higher temptation to a powerful, ambitious and intriguing people than any place on earth. It is the only key to the immense regions watered by the Mississippi and its tributary streams, to a country larger in extent than all Europe, surpassed by no portion of the world in fertility of soil and most of it in climate a paradise. . . . Your western people will see in Bonaparte, at their very doors, a powerful friend or a dangerous enemy; and should he, after obtaining complete control over the navigation of the Mississippi, approach them, not in the menacing attitude of an enemy, but under the specious garb of a protector and a friend; should he, instead of embarrassing their commerce by any fiscal arrangements, invite them to the free navigation of the river, and give them privileges of trade not heretofore enjoyed; should he, instead of attempting to coerce them to his measures, contrary to their wishes, send missionaries into their country to court and intrigue with them, he may seduce their affection and thus accomplish by address and cunning what even his force might not be equal to. In this way, having operated upon their passions, having enlisted in his service their hopes and their fears, he may gain an undue ascendency over them. Should these things be effected, what will be the consequences? . . . . Whenever this period shall arrive, it will be the crisis of Amer-

ican glory and must result, either in the political subjugation of the Atlantic States, or in their separation from the western country."

In replying to these remarks, Mr. Breckenridge, of Kentucky, said: "To induce us to depart from this proper, this safe, and honorable course of proceeding, which is pursuing by the President, the gentleman from Pennsylvania first and the gentleman from Delaware again told you, that by such pacific measures you will irritate the western people against you; that they will not be restrained by you, but will either invade the country themselves, or withdraw from the Union and unite with those who will give them what they want. Sir, I did not expect to hear such language held on this floor. The gentleman from Pennsylvania best knows the temper and views of the western people he represents, but if he meant to extend the imputation to the state I have the honor to represent, I utterly disclaim it. The citizens of Kentucky value to highly their rights and character to endanger the one or dishonor the other. They deal not, sir, in insurrections. They hold in too sacred regard their federal compact to sport with it. They were among the first to oppose violations of it, and will, I trust, be the last to attempt its dissolution. The time, indeed, was when not only irritation but disgust prevailed in that country; when instead of sending fifty thousand men to seize on Orleans an attempt was meditated and a solemn vote taken in congress to barter away this right for twenty five years.* But those times have passed away. . . . . But I beg to ask gentlemen who hold such language, will the western people, admitting they were to withdraw from the Union, be able to accomplish the object? Could they alone go to war with France and Spain? Could they hold Orleans, were they to take possession of it, without the aid of the United States? Admitting they could hold it, what security would they have for their commerce? A single ship-of-the line would be able completely to blockade that port. See also the Havana, one of the safest and strongest of the Spanish ports and so situated as to possess every advantage in annoying our commerce. Are the gentlemen, therefore, really serious when they endeavor to persuade us that the western people are in such a state of fury and mad impatience that they will not wait even for a few months to see the fate of a negotiation, and if unsuccessful receive the aid of the whole nation,

* See Chapter II.

but that they will madly run to the attack without a ship, without a single cannon, without magazines, without money, or preparation of any kind; and what is worse, without union among themselves; and what is still worse, in face of the laws and Constitution of their country? It is impossible. . . . . Although I think it incumbent on us, for the reasons I have stated, to try the effect of negotiation, yet, should that fail, I think it incumbent on us also to be prepared for another resort. I agree with gentlemen that such an important right should not be held by a tenure so uncertain. The only difference between us then is, what are the proper means to obtain this great end? The course pursued by the President is, in my opinion, the only true and dignified course. It is that and that only which will certainly attain the object; and is the only one which will tend to unite cordially all parts of the Union. But we ought to be prepared, in case of a failure, instantly to redress ourselves. This instead of having an evil, will in my opinion have a good effect on the negotiation." He concluded by moving as an amendment to the resolutions of Mr. Ross that all after the word "resolved" be stricken out and the following be inserted in lieu thereof:*

"That the President of the United States be and he is hereby authorized whenever he shall judge it expedient, to require of the Executives of the several States to take effectual measures to arm and equip according to law and hold in readiness to march at a moment's warning eighty thousand effective militia, officers included; that the President may if he judge it expedient authorize the Executives of the several States to accept as part of the detachment aforesaid any corps of volunteers who shall continue in service for such time not exceeding —— months and perform such services as shall be prescribed by law; that —— dollars be appropriated for paying and subsisting such part of the troops aforesaid whose actual service may be wanted and for defraying such other expenses as during the recess of Congress the President may deem necessary for the security of the territory of the United States; that —— dollars be appropriated for erecting at such place or places on the Western waters as the President may judge most proper one or more arsenals."

Mr. Clinton of New York made a powerful appeal in support of the policy of the administration in resorting to negotiation instead of war to secure the revocation of the interdiction at New Orleans. He showed conclusively the impracticability

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*Annals of Congress

of forcibly taking possession of New Orleans before every peaceful resort had been exhausted. Not only was the plan chimerical, but it was exceedingly dangerous to the security of the United States, because it would mean a gigantic war with both France and Spain, with the eventual loss of Louisiana and the probable dismemberment of the Union. He made light of the threat of the western settlers to separate themselves from the Atlantic states, and declared that upon the agitation of almost every political difference since the formation of the government some section had taken umbrage and threatened to withdraw from the Union. He asserted that the most hazardous course any section could pursue would be to separate themselves from the Union; and he did not believe the threats could be genuine or in earnest. He showed the unsoundness of the statement of Mr. Ross that the seizure of New Orleans would facilitate negotiation on the Mississippi question. He concluded with the declaration that the United States should exhaust every measure of negotiation, but should be prepared for war as a last resort.

Mr. Dayton of New Jersey ridiculed many of the statements of Mr. Clinton, and insited that the deplorable situation of the western people could not be denied. He declared that nearly half a million of fellow-citizens were wholly cut off from market, and asked if senators had any idea what that meant. He read an article to show that three productions of the western states, entered at New Orleans in 1801 (as taken from the custom house books), amounted to about one million six hundred thousand dollars;* they were cotton, tobacco and flour. He showed further that nine or ten other staple products of the West raised the grand total that passed through New Orleans from that section to nearly four millions of dollars. It was officially shown, he said, that from February 1st to June 10th, 1802, one hundred and fifty vessels of from one hundred to three hundred tons had cleared from the New Orleans custom house, and that eighty more such vessels would be required to carry off the produce yet in store; Tennessee had produced one-fourth of this crop. He said: "Thus we see that property amounting to four millions* annually exported in the first six months of the year, is to be embargoed at the will of a foreign Government, or the caprice of a Spanish Intendant; or, if permitted to pass at all, permitted under such restrictions and impo-

* Although these figures were disputed at the time, they seem to have been substantially correct.

sitions as to take away all the profit of transportation and render it scarcely worth the raising. What have we done to remove the obstruction and redress the wrong? We have sent a minister itinerant from Paris to Madrid and from Madrid to Paris to negotiate upon this subject. There may be precedent for this; there may be courtesy in the measure; but what are precedents? What are the forms of courtly politeness to an injured, an outraged, a starving people? But is nothing due to the dignity and honor of the nation most grossly insulted by the act? Let them who will be the dupes of the artful, insidious insinuation that it is an unauthorized act, an irregular proceeding of a subordinate officer of a Government which can punish with banishment or instant death the smallest deviation from duty. I do not believe the tale; I never believed it; and a late official act must undeceive all whose minds are not shut to the impressions of truth.* A late proclamation issued from Baton Rouge, a Spanish port, one hundred and fifty miles above New Orleans, prohibits all intercourse between Spaniards and Americans. Our people descending the river in pursuit of lawful commerce, are forbidden to buy an egg, or a mess of salt, or any comfort of life, from the possessor of the banks in the long, dreary distance of two hundred and seventy miles. Will the gentlemen call this, also, an unauthorized act of a Spanish Intendant?"

Mr. Cocke of Tennessee sustained the administration and among other things said: "For my part I do not wish to assail the territory or the rights of any nation nor to abuse their characters; but it is the more extraordinary when these gentlemen while doing so tell us at the same time that it is France that sets the Spaniards on† and that we are afraid to look the hero of Italy and France in the face. Perhaps those who accuse us thus of fear would be the first to hide their faces from real danger. It is not boasting that makes the patriot or the man of courage; it is coolness and resolution. We do not fear the hero of Italy or any other hero, but we fear the effects of war, of an unjust and rash war."

Mr. J. Mason of Massachusetts favored the adoption of the Ross resolutions. He denied with much emphasis the justice

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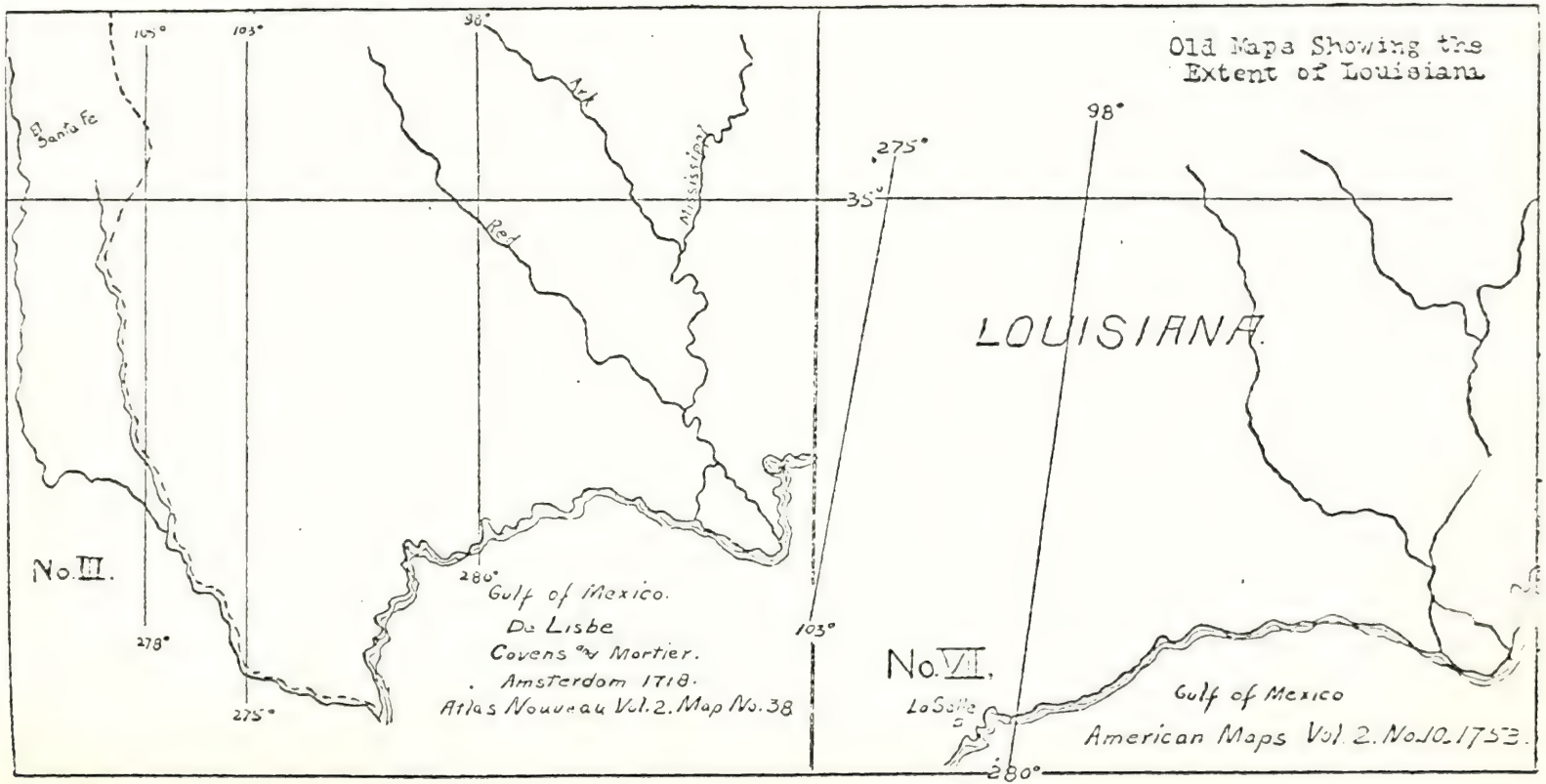
* If the interdiction was the sole act of the Intendant, by whom was the order authorized that forbade the people of the province of Louisiana to trade with the Americans on the Mississippi river? Surely not that of the Intendant. Do not, then, the two acts disprove the statement that it was the unauthorized act of the Intendant only; and prove that they were the deliberate orders of some power high in authority either of France or of Spain?

† He did not deny that France might have been responsible for the interdiction

of "dubbing them war resolutions." Having read them he remarked: "Is this not true; do we not agree in this unanimously; will any member of the senate deny it? Is not our right to the navigation of that river a natural and inviolable right? What does it further say? That we have an unquestionable right to the deposit at New Orleans; have we not that right? It is further declared that this right is important; can this be denied? Upon every principle of right and safety the resolutions should be supported. . . . I have no doubt that this infraction of the treaty is the authorized act of either France or Spain.* It is now from twelve to eighteen months since the rumor of the cession of Louisiana has prevailed, and no authentic information on the subject has ever been furnished to the people of the United States. How then are we to account for this secrecy? If Spain determined to deprive us of a right, would she inform us of it by message? No, she would pursue exactly the conduct she has done. . . . . The period at which this infraction took place affords strong presumption of the motive and design. It took place at the moment when the French thought they had completely overcome the blacks and restored the Island of St. Domingo to obedience; they had determined that the subjugation of that island should precede the attempt upon Louisiana, and in the moment of their imaginary triumph, they commenced their operations at New Orleans by the suspension of our right.* As to the assertions that Louisiana will be ceded or is ceded with a special regard to our limits, I do not regard them; they are evidently made only to lull us." He argued that taking possession in accordance with the resolutions was an act to regain our own property, and could not be regarded as a war proceeding. The United States should take possession of its own property, and afterward, if there was anything to negotiate, it could be attended to better than before, and in the meantime the western country would receive relief. He did not fear war with both France and Spain, because Great Britain, in that case, would assist the United States.

Mr. Wells of Delaware said on the following day: "Have you not seen the letter of the Governor of New Orleans to the Governor of the Mississippi territory? In this letter I learn that the Governor comes out and acknowledges his co-operation with the Intendant, justifies the breach of the treaty, and declares that these instruments cease their binding force the moment it

*A majority of the members of Congress thought the same.


Old Maps Showing the Extent of Louisiana
105°
103°
98°
El Santa Fe
Ark
Mississippi
Red
35°
No. III.
278°
275°
280°
Gulf of Mexico.
De Lisbe
Covens & Mortier.
Amsterdam 1718.
Atlas Nouveau Vol. 2. Map No. 38
275°
98°
103°
LOUISIANA.
No. VII.
La Salle
Gulf of Mexico
American Maps Vol. 2. No. 10. 1753.
280°

suits the interest of either party to break through them. . . . It has long been evident that the French have attached to these territories upon our frontier an importance which of themselves they do not bear and which can only be attributed to them on account of their connection with our Southern and Western States. If you treat, therefore, for an extension of your limits, you will be disappointed. If you negotiate respecting the right of deposit, and should succeed, you will obtain no better security than that which has already been found ineffectual. For my part, I am strongly impressed with an opinion that the First Consul has a project in view deeply hostile to the prosperity of our country. One great object of the French is to increase their maritime strength. The position which they are about to take in New Orleans will soon put them at our expense in possession of an immense carrying trade and reduce under their influence the fairest portion of our empire. Perhaps I may be asked, does the First Consul imagine that the people of the United States will consent to see subjected to foreign domination any part of their territory? This is an inquiry which Bonaparte has not been much in the habit of making. He knows the extent of the means he possesses in this country. It is but a few years since violent jealousies prevailed between the Atlantic and the Western States. Fortunately, they have subsided; these jealousies he will endeavor to rekindle. Possibly he may calculate upon detaching the people on the seaboard from the support of their brethren on the western waters.* He has already succeeded in concealing the hand which guided the pen of the Intendent at New Orleans. His troops are probably now approaching our shores, and what means of precaution have you adopted? . . . Had the advice of the honorable gentleman near me (Mr. Morris) been listened to, when you were disbanding your army, this crisis would not have happened. Had you then posted at the Natchez, as he recommended, a thousand soldiers, the navigation of the Mississippi would not now have been interrupted. He told you what would happen, and his prediction has been literally fulfilled. There is but one fault I find with these resolutions, which is, they do not go far enough. If I could obtain a second, I would move an amendment explicitly authorizing the taking possession of both the Floridas as well as the island of New Orleans. . . . Let the French

* This was the reason given by many persons why France had probably authorized the interdiction.

be but once settled along our southern border and they will have the whole of your Southern States at their mercy."

Mr. Wright of Maryland delivered a speech of unusual power in support of the administration's policy of negotiation before resorting to war measures. He did not deny the flagrancy of the act of the intendant, but upheld the policy of peaceful negotiation already in progress under the direction of President Jefferson. There could be no two ways about it; redress should be sought first and now through peaceful measures. That was the custom of all nations, and had been adopted thus far by the United States, particularly by General Washington, to whom the opposition took such pains to refer. He denied the figures of Mr. Dayton, and declared that the total exports for the year 1802 were only one million ninety-five thousand four hundred twelve dollars instead of four millions.*

On the same day, Mr. Morris of Pennsylvania said: "It behooves us, however, to consider well the spirit of the French government, which in all its changes has never lost sight of this object. The French minister, M. de Luzerne, when congress was deliberating on the ultimata for peace (in 1783), obtained a resolution that our ministers should, as to our western boundary, treat under the direction of France.† Our ministers disdained the condition and refused to obey. Their manly conduct obtained for you the countries whose fate is now suspended in your deliberations. Never, no never, has France lost sight of Louisiana. Never for a moment has she been blind to its importance. Those who, driven from her bosom into exile, wandered about among us, have gathered and communicated the fullest information. While they enjoyed your hospitality, they probed your weakness, and meditated the means of controling your conduct. . . . Had this transaction (the secret treaty of San Ildefonso) been intended fairly, it would have been told frankly. But it was secret because it was hostile. The First Consul, in the moment of terminating his differences with you, sought the means of future influence and control. He found and secured a pivot for that immense lever, by which with potent arm he means to subvert your civil and political institutions. . . . What followed? An open and direct violation of the treaty by a public officer of the Spanish government.‡ . . .

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* Mr. Wright was evidently wrong, because the official records show the exports to have aggregated about the sum mentioned by Mr. Dayton.

† Diplomatic Correspondence, secret. ‡ Annals of Congress.

Bonaparte has placed himself at the head of the French republic by deeds which cast a lustre on his name. In his splendid career he must proceed. When he ceases to act he will cease to reign. Whenever in any plan he fails, that moment he falls. He is condemned to magnificence."

In his concluding argument Mr. Ross said: "The Spaniards delayed and evaded the execution (of the treaty of 1795) in a very unjustifiable manner. But the administration of that day did not rely upon negotiation alone; they ordered troops to the Ohio, and had the Spaniards persisted in their refusal, those troops would have acted decisively without any new application to the court of Spain They saw the approaching storm; they entered upon the execution of the treaty by running the line and giving up the posts; and if the war office be examined, gentlemen will find that our troops were then so disposed as to fall down the river Mississippi and act with effect at any moment. It was well known to us that Spain did not act in that business from the mere impulse of her own interests or wishes. She was then and is still under the irresistible influence of a powerful neighbor, with whom we at that time had serious differences; she was urged and pushed forward by France;* for Spain until she became thus dependent upon France has ranked high for her good faith, and in my opinion deservedly higher than any other court in Europe. . . . We come now to consider the resolution offered as a substitute. It is highly gratifying to find that gentlemen are at last inclined to act—to do something like defending the rights of our country. Is there any new shape given to this business by the proposed substitute? We propose fifty thousand militia; they substitute eighty thousand. To do what? Will gentlemen tell us the difference. It is said ours are absolutely imperative; if so, alter them and give an unqualified discretion. We will agree to it. My own opinion is, that they should be immediately acted upon. If the majority wish for a bare discretionary power, I assent to it. There is no difference except that one set of resolutions puts greater power in the hands of the President than the other. Are gentlemen on the other side afraid to trust the President? Do they think he will abuse this power? Will it hurt the negotiation? Instead of hurting it, our minister ought to carry this act to Europe with him. He would then have more means, and more forcible arguments to urge in his negotiation."

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* Note that the charge is openly made that France was not only responsible for the interdiction, but for the refusal to surrender the posts in 1797.

Many of the senators from whose speeches these extracts are taken, were members of the minority party of congress—were opposed to the Jeffersonian administration, and took an ultra position to throw the responsibilities of inaction upon the majority, or at least to stimulate and develop the "Mississippi policy" of Mr. Jefferson. The friends of the administration in the senate counseled conservatism and declared that the President was doing all that should be done at that time to remove the interdiction and to secure a continuance of the rights granted by the treaty of 1795; that to descend with a force upon New Orleans would be rash and would react upon the United States; that the right to navigate the Mississippi had not been abrogated, only the right to the deposit in New Orleans and the privilege of trading with the Spanish people had been prohibited; that there was no occasion for hostile proceedings, because, in any event, the worse Spain had done was to fail assigning an "equivalent establishment" for the deposits on the Mississippi; and that there was nothing to show that the act of interdiction was other than the unauthorized misapprehension of the intendant. The resolutions of Mr. Ross were rejected by a vote of fifteen to eleven—a strict party test. The resolutions of Mr. Breckenridge were then adopted without a dissenting voice. All who had favored the Ross resolutions, including Mr. Ross himself, voted for the Breckenridge resolutions, (see *supra* for both resolutions).*

At the session of the house in January, 1803, a secret committee, of which Mr. Nicholson of Maryland was chairman, was appointed to investigate the Mississippi question and report upon the desirability and expediency of acquiring New Orleans and the Floridas.† The committee did not extend their investigations beyond the immediate cause of complaint. Mr. Nicholson said during the debate in October, 1803: "As one of the committee, I am free to declare that I did not at that time entertain the most distant idea that the almost boundless tract of country lying west of the Mississippi could be obtained by our government on any terms, much less for the comparatively inconsiderable sum which we have agreed to pay for it. Had I then offered an opinion on the subject, I should have had no hesitation to say that the west bank of the Mississippi was almost

* The congressional debate naturally assumed a partisan hue, the friends of the administration denying and the opposition affirming the responsibility of France for the interdiction. Of course, this was rendered possible by the lack of conclusive knowledge on the subject.

† Annals of Congress.

incalculable in its value to the United States, if it was only for the purpose of preventing any foreign nation from colonizing it. If that country were thickly settled by a foreign nation, the whole river Mississippi, from its source to the sea, must have been guarded by a strong chain of military posts; whereas the wilderness itself will now present an almost insurmountable barrier to any nation that may be inclined to disturb us in that quarter." The committee considered the interdiction at New Orleans with a view of having it revoked at the earliest possible moment, and recommended measures which were deemed likely to prevent a recurrence of the act in the future. Mr. Nicholson said in October: "An inquiry of this kind naturally led to a view of the situation of the western country generally, and it was readily perceived that the same inconveniences which had occurred in relation to the mouth of the Mississippi might at some future period perhaps not very distant embarrass the commerce of the whole Mississippi Territory, the western part of Georgia and the eastern part of Tennessee. It was seen that the produce of this valuable country must be carried to the sea by means of the great rivers which rise in the Mississippi Territory, but pass through East and West Florida before they reach the Gulf of Mexico; and the committee were of opinion that these ought if possible to be secured by treaty." They therefore made recommendations in accordance with their findings. Their report, though made known to the members of congress, was not published at that time. Mr. Randolph said in October, 1803, "it had been thought inexpedient to publish the report at that time," and moved that it be referred to a committee to be published for the use of the members, but such action was postponed. It was taken up later and published in its proper place in the January proceedings. The committee recommended the purchase of New Orleans and the Floridas, in order to get the free navigation of the southern rivers. They concluded by recommending the adoption of the following resolution:

"*Resolved,* That the sum of two million dollars in addition to the provision heretofore made, be appropriated to defray any expenses which may be incurred in relation to the intercourse between the United States and foreign nations, to be paid out of any money that may be in the treasury, not otherwise appropriated and to be applied under the direction of the President of the United States, who if necessary is hereby authorized to

borrow the whole or any part thereof, an account whereof as soon as may be shall be laid before congress."

The action on the "Mississippi question," as it was called, in the house was less protracted than in the senate, though the sentiment was fully as strong for the maintenance of treaty rights. The following resolution, introduced by Mr. Griswold of Connecticut, was rejected:*

"*Resolved,* That the people of the United States are entitled to the free navigation of the river Mississippi; that the navigation of the river Mississippi has been obstructed by the regulations recently carried into effect at New Orleans; that the right of freely navigating the river Mississippi ought never to be abandoned by the United States; that a committee be appointed to inquire whether any, and, if any, what, legislative measures are necessary to secure to the people of the United States the free navigation of the river Mississippi."

The house of representatives, on January 7, passed the following act:

"*Resolved,* That this House receive, with great sensibility, the information of a disposition in certain officers of the Spanish government at New Orleans to obstruct the navigation of the river Mississippi, as secured to the United States by the most solemn stipulations. That, adhering to that humane and wise policy which ought ever to characterize a free people, and by which the United States have always professed to be governed; willing, at the same time, to ascribe this breach of compact to the unauthorized misconduct of certain individuals, rather than to a want of good faith on the part of His Catholic Majesty; and relying with perfect confidence on the vigilance and wisdom of the Executive, they will wait the issue of such measures as that department of the government shall have pursued for asserting the rights and vindicating the injuries of the United States; holding it to be their duty, at the same time, to express their unalterable determination to maintain the boundaries, and the rights of navigation and commerce through the river Mississippi, as established by existing treaties."

Taking all the data presented in the house and senate into consideration and weighing the arguments of the members, there does not seem to be a reasonable doubt that Napoleon expected to place in New Orleans a sufficient force, aided by the militia there, to hold it against any probable attack of the

* Annals of Congress.

western settlers or a British armament; to control the interdiction of the deposits; to obstruct the navigation of the Mississippi by the Americans below the thirty-first degree without the payment of a heavy duty; to detach, if possible, the Western states from the Eastern and make them a part of his Louisiana domains; to secure the Floridas from Spain, by force if necessary; and to be then in a position to take Canada from Great Britain and Mexico from Spain when he should so desire, and later to conquer the Atlantic states, thus forming a magnificent empire in the New World for the glory of France. The refusal of the king of Spain, under the advice of the sagacious Godoy, to sign the treaty of cession for two years saved New Orleans from passing into the hands of France immediately after the treaty of St. Ildefonso. During that entire period Napoleon continued his demands or his entreaties, as seemed most likely to be efficacious, to secure the ratification of the king and to acquire by purchase the two Floridas as well. His threats were adroitly evaded by Godoy, until at length he began the formation of the armament destined for New Orleans, intending to take possession without the ratification of the Spanish monarch, in which case he would doubtless soon have likewise occupied the Floridas, should the United States not have forestalled his intentions by a prior possession.

Instinctively, the people of the United States associated the cession of Louisiana to France and the interdiction of the deposits. The latter seemed to them the beginning of troubles that were sure to result from the former. The declaration of the governor of Louisiana that the act was disapproved by him was not believed, particularly, as he did nothing to remove the interdiction. The ministers to France and Spain were instructed to inform the authorities of those countries that the interdiction must be removed and the rights of the United States under the treaty of 1795 be fully recognized. As Mr. Madison wrote to Mr. Livingston under date of January 18, 1803: "Such, indeed, has been the impulse given to the public mind by these events, that every branch of the government has felt the obligation of taking the measures most likely, not only to re-establish our present rights, but to promote arrangements by which they may be enlarged and more effectually secured." In order the more surely to effect this result, the government sent James Monroe on a mission extraordinary to assist Mr. Livingston at Paris and Mr. Pinckney at Madrid to effect treaties with the object of securing "a cession of New Orleans and the Floridas

to the United States, and consequently the establishment of the Mississippi as the boundary between the United States and Louisiana. In order to draw the French government into the measure, a sum of money will mark part of our propositions, to which will be added such regulations of the commerce of that river, and of the others entering the Gulf of Mexico, as ought to be satisfactory to France."*

An important statement made by Mr. Livingston concerning the act of the intendant at New Orleans in interdicting the deposits should be borne in mind: "I have examined the treaty; there is no pretence for this construction of it; and as the right has been regularly exercised till now, it will be generally believed in the United States that this construction could only have been suggested by a wish on the part of France to get rid of the provisions of the treaty before she took possession."† When all the circumstances are taken into consideration:—that Spain by the treaty of 1795 had not only recognized the right of the United States to the free navigation of the Mississippi, but had granted the perpetual privilege of deposit, either at New Orleans or some other "equivalent establishment" on the bank of the Mississippi; that this privilege had been continued without interruption, to the advantage of Spain, from 1797 to 1802; that the Spanish governor at New Orleans denied having given the order of interdiction; that the Spanish ambassador at Washington repudiated all knowledge of such an order; that the Spanish minister of state at Madrid stated that neither the king nor the ministry had directed any such action to be taken; that the interdiction had not been ordered until France was on the point of sending out an armament to take possession; that no satisfaction to the urgent requests of the American ambassador as to the attitude of France on the Louisiana questions was rendered; that the French ministry stated that the cession of the country asked for "was out of the question;" that the project of colonizing and strengthening Louisiana was "dear to the heart of Napoleon;" that it was well known in New Orleans that the province had been retroceded to France and would be soon formally turned over to her; that the mere request of the first consul was sufficient to cause the intendant to issue the order; and that France was anxious to know what the United States would do in case the stipulations of the treaty of 1795

* American State Papers.

† Thus even Mr. Livingston entertained the opinion that France was responsible for the interdiction.

concerning the navigation of the Mississippi and the privilege of deposit were abrogated—it is not necessary to go beyond the consular government of France to learn where the order of interdiction originated.

The authorities of the Spanish government at New Orleans had little conception of the aggressive commercial spirit of the Americans. And the government of Spain was even farther removed from comprehending the resolution that would take forcible possession of the mouth of the Mississippi for the sole purpose of gaining a market. Barbe Marbois said: "Spain thought that circumstances only required from her an easy sacrifice. She consented in 1788 to cede the free navigation of the Mississippi to the States, founded on the left bank of that river. But she so little understood the spirit of those Republicans that she had no hesitation in proposing as a condition of this grant that it should only take effect in case they determined to form an empire distinct from that of the Atlantic States." The threats which preceded the Spanish refusal to permit the Americans to navigate the Mississippi, did not betoken a spirit that would either yield to the refusal or surrender allegiance to the United States. The overtures of the Spanish authorities, which had for their object the intention of dividing the Union, were never seriously taken into consideration. The efforts which were put forth were occasioned by malcontents, law-breakers, and the uninformed. The threats themselves meant nothing more than to hasten the government of the United States into some action that would afford effectual measures of relief.

The interdiction of the deposits was severely felt in New Orleans, and roused even there storms of protest. The city was soon in sore straits for provisions, in particular flour, and the complaint became so great that the intendant himself was obliged to modify his interdiction to the extent of admitting a few of the staple necessities. As a matter of fact the proclamation of interdiction only served to make clear that all exclusive and arbitrary barriers over commerce must give way to human necessities. But this point should be noted: If the interdiction was the act solely of the intendant, why did he not revoke it when it was seen to be such a burden even to the inhabitants themselves?* His proclamation of February 5, 1803, gave to the people the relief demanded. But this was merely a slight infraction of the edict, and not its revocation. In view of the

* Everything indicates that the Intendant was acting under the orders of a power he dared not disobey.

hostility of the inhabitants themselves, occasioned by the hardships thus thrust upon them, it seems reasonable that the intendant must have been the instrument of some higher power.

After the lapse of the three years stipulated in the treaty, the right of deposit in New Orleans was continued by tacit agreement until its revocation by the interdiction in October, 1802. The report was promptly circulated throughout the western country that the right to navigate the Mississippi had been prohibited, but this was not the fact. Spain had the right to prohibit the deposits in New Orleans and the right to forbid her subjects to have any business dealings with the Americans. It is true that she did not assign an "equivalent establishment" on the Mississippi, but neither did the United States press for such a place, because the Americans did not want another deposit; they wanted New Orleans. It was easy for the Americans to use their wants as the basis of an incontestible right. They therefore claimed about every right pertaining to the river; and they longed for a rupture that would give them all they desired, knowing full well that the feeble Spaniards would prove no barrier to the sweep they should make were they to determine to come down the river for the purpose of capturing New Orleans. At one time steps were taken to make Natchez the "equivalent establishment," but this was given up finally as impracticable. It was thought by many of the settlers that the French government was back of the interdiction. Had not this been thought to be the probability and had not the settlers thought that to take Louisiana from France was an altogether different step than to take it from Spain, the chances are that they would have taken possession of New Orleans early in 1803.

Mr. Martin, the historian, writes: "On the first of March (1803), the King (of Spain) disapproved of the order of Morales (the Intendant), prohibiting the introduction of deposit of goods, wares and merchandise from the United States in the port of New Orleans; and ordered that the United States should continue to enjoy their right of deposit in New Orleans, without prejudice of his to substitute some other spot on the banks of the Mississippi." Late in May, 1803, the intendant revoked the interdiction which he had ordered in the previous October. It should be noted that this revocation was pronounced nearly two months after Napoleon had made up his mind to sell the province to the United States. Is it not reasonable to conclude that as soon as he became satisfied the sale would be effected, he sent an order across the Atlantic to the intendant to remove

the interdiction in order to quiet the Americans? The order of the king of Spain to the intendant was wholly perfunctory, because he had issued a decree on the 15th of the previous October directing the governor of Louisiana to turn the province over to France and was aware that his authority had practically ceased in Louisiana. It must have been upon the order of the French republic that the interdiction was removed.

That the intendant at New Orleans was acting under the express request or direction of the French government, is proved by the fact that, although the Spanish minister at Washington and the Spanish secretary of state at Madrid, under the direction of the king of Spain, had ordered the removal of the interdiction, it was continued in force without interruption and with increased exactions and severity. Mr. Madison, secretary of state, wrote to Mr. Pinckney under date of March 2, 1803, that "our latest authentic information from New Orleans is of January 20. At that date the edict of the Intendant against our right of deposit had not been revoked, although the letters to him and the Governor from the Spanish minister here had been previously received. And it appears that the first outrage had been followed by orders of the most rigid tenor against every hospitable intercourse between our citizens navigating the river and the Spanish inhabitants. This continuation of the obstruction to our trade and the approach of the season for carrying down the Mississippi the exports of the western country have had the natural effect of increasing the western irritation and emboldened the advocates for an immediate redress by arms. . . . . Should the deposit not be restored in time for the arrival of the Spring craft, a new crisis will occur, which it is presumed that the Spanish government will have stimulated to prevent by the very heavy claims of indemnification to which it would be otherwise fairly subjected."*

In his letter of April 18, 1803, to Messrs. Livingston and Monroe, Mr. Madison said: "Our latest authentic information from New Orleans is of the 25th February. At that date the port had been opened for provisions carried down the Mississippi, subject to a duty of six per cent if consumed in the province and an additional duty if exported, with a restriction in the latter case to Spanish bottoms and to the external ports permitted by Spain to her colonial trade (see infra). A second letter written by the Spanish minister here has been received

* American State Papers.

by the Intendant but without effect. On the 10th of March his interposition was repeated in a form which you will find, by his translated communication to the department of state in one of the enclosed papers, was meant to be absolutely effectual. You will find in the same paper the translation of a letter from the French charge d'affairs here to the Governor of Louisiana written with a co-operating view. A provisional letter to any French agents who might have arrived had been previously written by him, in consequence of a note from this department, founded on a document published at New Orleans, showing that orders had been given by the Spanish Government for the surrender of the province to France; and he has of late addressed a third letter on the subject to hte Prefect said to have arrived at New Orleans. It does not appear, however, from any accounts received, that Louisiana has yet changed hands. What the result of the several measures taken for restoring the right of deposit will be remains to be seen. . . . The silence of the French Government to Mr. Livingston's representation is a very unfavorable indication. . . . . The letter from the Marquis de Yrujo, of which you will find a translated copy in the enclosed newspaper of this date, was received yesterday. The letters to which it refers, as containing orders for the re-establishment of our deposit at New Orleans, were immediately forwarded. They will arrive in time, we hope, to mitigate considerably the losses from the misconduct of the Spanish Intendant; and they are the more acceptable as they are an evidence of the respect in the government of Spain to our rights and our friendship. From the allusion in this communication from the Spanish minister to a future agreement between the two Governments on the subject of an equivalent deposit, it would seem that the Spanish Government regards the cession to France as either no longer in force or not soon to be carried into execution. However this may be, it will not be allowed, any more than the result of our remonstrance to Spain on the violation of our rights, to slacken the negotiations for the greater security and the enlargement of these rights. Whether the French or the Spaniards or both are to be our neighbors, the considerations which led to the measures, taken with respect to these important objects, still require that they should be pursued into all the success that may be attainable."*

It seems that Mr. Madison had been misinformed, for on

* American State Papers.

May 25 he wrote: "You were informed in my letters of the 18th and 20th of April that orders had been transmitted by the Spanish Government for restoring the deposits. The answers from New Orleans to the Spanish and French ministers here show that their successive interpositions, including the peremptory one from the Marquis de Yrujo of the 11th of March, were all unavailing. The orders of the King of Spain will no doubt be obeyed if they arrive before possession be given to the French authority; nor is it presumable that in that event they would be disregarded. Still it is possible that the French agents may choose to wait for the French construction of the treaty before they relinquish the ground taken by the Intendant; and the more possible as the orders to the Intendant may contain no disavowal of his construction of it. Under these circumstances it will be incumbent on the French Government to hasten the orders necessary to guard against a prolongation of the evil and the very serious consequences incident to it."

It should be borne in mind that in suppressing the deposits at New Orleans, Spain, when held to blame, claimed the right to do so.* She insisted that the privilege was a pure gratuity revocable at her pleasure; that the right by the United States to navigate the Mississippi had not been interfered with; that it was for the United States and not Spain to procure another place of deposit when New Orleans was refused them; that the inconsiderable losses to American citizens, by being forced through their own want of foresight in not procuring another place of deposit to load and unload in the middle of the river, could not justly be attributed to Spain, who had done only what she had a right to do, because the three years stipulated in the treaty of 1795 had expired before the promulgation of the interdiction; and that the injury to the royal revenue was ample justification for the revocation of the deposits at New Orleans. Why, it was asked in substance by the Spanish minister, did not the United States ask for another "equivalent establishment" on the Mississippi when the three years had expired, instead of depending upon the sufferance of Spain in permitting greatly to her loss the continuance of the deposits at New Orleans? It

* If the interdiction was pursuant to the order of France, Spain would have taken precisely the course she did, but would have taken an altogether different course had she been acting of her own volition. France desired the abrogation of the provisions concerning the deposits and the navigation of the Mississippi embraced in the Spanish treaty of 1795; Spain did not, because she had willingly granted them and had enjoyed them ever since; and besides, was wholly unconcerned, because she was about to surrender the province to France.

was for the United States and not for Spain to take the initiative in securing another establishment. Why should the negligence of the United States, which brought them loss, be made to react upon Spain, who had committed no offense? At the expiration of the three years it was the duty of the United States, in order to avoid precarious emergencies, to have sought for a new stipulation that would have secured their deposits somewhere. Had they done so they no doubt would have been accommodated; but instead of seeking an "equivalent establishment" they demanded the restoration of the deposits in New Orleans, a demand to which they had no right. Under the treaty stipulations the "equivalent establishment" must be convenient to the United States, and therefore had to be selected by them, but with the co-operative assent of Spain. This assent had never been refused by Spain; she had only refused the privilege in New Orleans. Had Spain, then, the right to suspend the deposits in New Orleans before agreeing with the United States on another "equivalent establishment?" Must Spain submit to the loss and inconvenience of the deposits after the three years, because the United States had neglected to provide an "equivalent establishment?" Or must Spain submit to the inconvenience after the expiration of the three years until a convention could be called to select an "equivalent establishment?" Or should the United States suffer the inconvenience after the three years until another place of deposit had been selected? This was the manner in which the situation was presented by the Spanish ministry.* It was then asked, why should Spain be held accountable for the American losses from the suppression of the deposits? To say the least, the United States had contributed to those losses by taking no steps to procure "an equivalent establishment."

The fact that the orders of high Spanish officials for the revocation of the interdiction were wholly disregarded by the intendant, is conclusive proof that he considered himself beyond the reach of the lash that invariably fell upon the backs of all subordinates guilty of disobedience to the imperial mandates of Spain. When to this observation is added the further fact that Spain, which was on the eve of surrendering the province to France, could have had no object of her own in prohibiting the deposits, the responsibility of the French republic for the interdiction cannot well be denied. It should be noted, also, that the

* It is not illogical nor unreasonable to suppose that these views of Spain were offered to carry into effect the wishes of France. See Diplomatic Correspondence.

first steps taken by the intendant to modify the severity of the act, were succeeding the reception by him of the order to that effect from the French chargé d'affairs at Philadelphia. Here, then, the intendant had the orders of both French and Spanish officials high in authority to revoke the interdiction, but refused fully to obey either, surely because he must have had in his possession an order from a much higher tribunal to justify a refusal against such preponderating odds.

It was beyond the power of the government of Spain to order the revocation of the interdiction at New Orleans, because she had retroceded Louisiana to France. This was known to the inhabitants of New Orleans. They knew that France alone had the authority to order the intendant to remove that restriction. This partly explains why the orders of Spain to the intendant were not obeyed, and why the interdiction was continued until orders had been received from France to restore the privilege. The orders of Spain to the intendant to remove the interdiction were only perfunctory measures resorted to to allay the wrath of the Americans. Why were the orders of the government of Spain unavailing? If the act of the intendant was not pursuant to the direct or indirect orders of France, why did not the latter, when she learned of the distress and indignation in America, order the removal of the interdiction? The king of Spain had ratified the treaty of St. Ildefonso in October, 1802, thus perfecting the ownership of the province by France; but the latter took no steps to remedy the complaint, though well knowing that upon her order alone would the intendant act. Was it not, as herein stated, because Napoleon desired to breed dissatisfaction among the people west of the Alleghanies with the view of their eventual separation from the Atlantic states and their formal coalescence with Louisiana for their own protection, prosperity and happiness?

For many years after the province had passed to the possession of the United States, the latter endeavored to obtain from the Spanish government satisfaction for the damage done by the interdiction of the deposits at New Orleans, but without success. In one way or another, Spain managed to evade any restitution therefor. Why? Was it not because she knew that the order had been issued at the dictation of the French republic? If it had resulted from the order of France, it was very natural that Spain should object strenuously to payment therefor. On the contrary, inasmuch as Spain was usually prompt to pay her just

dues, would she not have settled this claim, instead of contes it to the last, and then in the end totally avoiding payment? item was not settled until the treaty between Spain and the Un States in 1819, when in consideration of mutual renunciati the claim was finally dropped by the United States.

CHAPTER V

The Cession to the United States

THE treaty of Amiens, concluded March 25, 1802, between France and Great Britain, was unsatisfactory to both nations; and it was not strange, therefore, that hostilities soon again made their appearance. During the autumn of 1802 and the succeeding winter, both nations seemed to be drifting steadily and directly into the vortex of war. The possession of Louisiana by France made its defense by that nation necessary, as it also made its conquest and acquisition an object to Great Britain. The transfer by Spain was secret, and although it soon leaked out, several months of delay were gained by France, during which time the preparations to occupy and defend it with troops were made. Neither the sentiments of Spain, nor the distress of the western settlers in the United States, figured with much importance in the calculations of either France or Great Britain. On August 10, 1802, Mr. Livingston wrote from Paris to the secretary of state, "There are obvious symptoms of ill humor between this country and Britain, and I think it will not be long before they assume a serious aspect. Good may arise out of this evil, if it should happen." And he wrote on September 1, "The extreme hauteur of this Government to all around them will not suffer peace to be of long continuance. The French minister at Lisbon, it is said, is coming home without taking leave. England is very sour. . . . Helvetia is still in arms." He wrote on October 28, "While the union between France and Russia subsists, the discontents which almost every nation in Europe feels at the extreme loftiness of the first will be suppressed. But as fear and not affection occasions the suppression, they are ready to break out on the first favorable moment. Many think that moment not very

distant. . . . Britain is seriously dissatisfied, and indeed has some reason to complain. . . . The prospect of a rupture grows more serious. I can tell you with certainty that a remonstrance in pretty strong terms has been presented by her minister on the subject of the Consul's interference in the affairs of Helvetia. How it will be received I know not; but think it would not have been made if it had not been the intention of Britain to seek a quarrel." He said on February 18, 1803, "I find that the sentiments of the two nations (France and Great Britain), with respect to each other, have totally changed from what they were a year ago; they at present mortally hate each other, and nothing but the want of allies keeps Britain from breaking out."*

Through the friendly offices of Joseph Bonaparte, Mr. Livingston, in one of his long memorials to the first consul about the middle of February, 1803, made the following audacious observations: "It cannot be doubted that the peace between France and Britain has been too disadvantageous to the latter to be of long duration. Strong symptoms of an approaching rupture have already appeared; and the statesmen of both countries will begin to examine the points of attack and defense, and the acquisitions that afford the most permanent advantages. The Cape, Malta and Egypt have already awakened the cupidity of Great Britain. Should she extend her views across the Atlantic (and what is to limit them?) the cession of Louisiana to France offers her the fairest pretence to invade that country either from Canada or by the Atlantic. She felt no reluctance in leaving them to Spain; but she will not quietly see them in the hands of France. She will strain every nerve to acquire them. By uniting them with Canada and Nova Scotia she encircles the United States. . . . If she should unite Louisiana and West Florida to her other American possessions, no power in Europe will be able to oppose her force." On the 11th of March he said, "things every day look more towards a rupture between this country and Britain, and though the politicians think otherwise I believe a war not very distant." In his letter of March 12, he communicated the following ominous occurrence:

"I broke off this part of my letter to attend Madame Bonaparte's drawing-room, where a circumstance happened of sufficient importance to merit your attention. . . . After the First Consul had gone the circuit of one room, he turned to me

* American State Papers.

and made some of the common inquiries usual on these occasions. He afterwards returned and entered into further conversation. When he quitted me, he passed most of the other ministers merely with a bow, went up to Lord Whitworth (the English minister), and after the first civilities said: 'I find, my lord, your nation want war again.' L. W.: 'No, sir, we are very desirous of peace.' First Consul: 'You have just finished a war of fifteen years.' L. W.: 'It is true, sir, and that war was fifteen years too long.' Consul: 'But you want another war of fifteen years.' L. W.: 'Pardon me, sir, we are very desirous of peace.' Consul: '*I must either have Malta or war.*' L. W.: 'I am not prepared, sir, to speak on that subject; and I can only assure you, citizen First Consul, that we wish for peace.' The prefect of the palace then came up to the Consul and informed him that there were ladies in the next room and asked him to go in. He made no reply, but bowing hastily to the company retired immediately to his cabinet without entering the other room. Lord Whitworth came up to me and repeated the conversation as I now give you. I asked Lord Whitworth whether there were any pending negotiations relative to Malta. He told me that there were; that the conduct of France having convinced them that they still had views upon Egypt, and the guaranties to which they were entitled with respect to Malta not having been executed, they thought they could not surrender it with safety. But what brought on the business today was a message from the King of Great Britain to the Parliament on the 1st which has just been received here, speaking with distrust of the armaments in the French ports, and in fact preparing them for war. It is then highly probable that a new rupture will take place, since it is hardly possible that the First Consul would commit himself so publicly unless his determination had been taken."*

The American minister to England, Rufus King, wrote to the secretary of state on March 17, that "war seems more and more probable; indeed it appears to me inevitable. Holland will be involved, and Spain and Portugal must obey the commands of France." He announced that the day after the king's message to parliament was communicated to the French government, Bonaparte delivered to Lord Whitworth a paper practically amounting to a declaration of war; and that the greatest activity prevailed in the British military and naval departments. The "paper" referred to was the ultimatum of France, from which she

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* American State Papers.

could not retreat, and to which Great Britain could not accede with honor. Thus, as early as the middle of March, war was rendered absolutely inevitable. As this culmination of the jealousies and hostilities through many months had a direct bearing upon the fate of Louisiana, it has here been given considerable space.

Previous to this time, say the middle of March, 1803, there is not a line to show that Bonaparte intended otherwise than to take possession of Louisiana with the armament still assembled in Holland. Indeed, in his "paper" to Lord Whitworth he said, "The expedition preparing in the Dutch ports was, as all the world knew, destined for America; but in consequence of the message (of the King of England to Parliament), it had been recalled and would not proceed. If the armament announced in the message be not satisfactorily explained, or if it take place France would march twenty thousand men into Holland. The forces debarked in the ports of Holland would be reinforced and assembled on the coast of Flanders. The French army will be immediately put on a war establishment. England must not expect, under the cover of an armament, to avoid the execution of the treaty of Amiens."* As Great Britain did not retreat from the declarations of the king's message, nor explain the meaning of her armament, an immediate and radical change occurred in all the involved policies of France.

As early as December 20, 1802, Lord Whitworth, the British ambassador to France, wrote to his government that, "The First Consul is determined to exert his utmost efforts, not only to subdue St. Domingo, but to strengthen himself in Louisiana and the Floridas; and so pressing are his insistances with the Court of Spain for the possession of those two provinces that they will inevitably be ceded to him in the course of the month of January."† He wrote on February 7, 1803, that if St. Domingo should be lost to France, Napoleon would no doubt turn his whole attention to Louisiana and the Floridas. On February 28 he wrote, "In the next place, the conduct of America, from whose President everything subservient was expected, and by whom it is now foreseen that every opposition will be made to the projects of the French Government in that part of the world and that so far from being able to gain quiet possession of the Floridas, the settlement even of Louisiana may be considered as doubtful."

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* American State Papers.

† Foreign Correspondence of England.

And again on March 17 he wrote, "The Americans, whose fears never suffered them to doubt the professed destination of the armaments in the Dutch ports, are now delivered from their apprehensions. They are sanguine enough to hope that they shall hear no more of the threatened exchange of the Floridas, or even of the projects on Louisiana. It is certain that M. de Talleyrand has given the American Minister (Mr. Livingston) reason to suppose that these projects will be deferred, and he trusts to the chapter of accidents for the rest." From the statement above, it will be seen that the British minister did not believe that the French armament was destined for Louisiana. As shown in the king's message to parliament, it was not doubted that the French force in the Dutch ports was intended to be used against England.

The account of his famous interview with Napoleon is given by Lord Whitworth as follows: "He began by asking me if I had any news from England. I told him that I had received letters from Your Lordship (the English Prime Minister) two days ago. He immediately said, 'So you are determined to go to war.' 'No, Premier Consul,' I replied, 'we are too sensible of the advantages of peace.' 'Nous avons,' said he, 'déjà fait la guerre, pendant quinze ans.' As he seemed to wait for an answer, I observed only, 'C'en est déjà trop.' 'Mais,' said he, 'vous voulez la faire encore quinze années, et vous m'y forcez.' I told him that was very far from His Majesty's intentions. He then proceeded to Count Marcoff and the Chevalier Azzara, who were standing together at a little distance from me, and said to them 'Les Anglais veulent la guerre, mais s'ils sont les premiers à tirer l'épée, je serai le dernier à la remettre. Ils ne respectent pas les traités. Il faut dorénavant les couvrir de crêpe noir.' I suppose he meant the treaties. He then went his round, and was thought by all those to whom he addressed himself to betray great signs of irritation. In a few minutes he came back to me, to my great annoyance, and resumed the conversation, if such it can be called, by something personally civil to me. He then began again: 'Pour quoi des armements? centre qui des measures de précaution? Je n'ai pas un seul vaisseau de leigne dans les ports de France, mais si vous voulez armer, j'armerai aussi; se vous voulez vous battre, je me battrai aussi. Vous pourrez peut-être tuer la France, mais jamais l'intimider.' 'On ne vondroit,' said I, 'ni l'un ni l'autre. On vondroit vivre en bonne intelligence avec elle.' 'Il faut donc respecter les traités,' replied he; 'malheur a ceux qui ne respectent pas les traités. Ils en seront responsibles

a toute l'Europe.' He was too agitated to make it advisable to prolong the conversation. I therefore made no answer, and he retired to his apartments repeating the last phrase. It is to be remarked that all this passed loud enough to be overheard by two hundred people who were present. I was fortunate enough not to be betrayed into anything imprudent, or which could be misconstrued. I am persuaded that there was not a single person who did not feel the extreme impropriety of his conduct, and the total want of dignity as well as of decency on the occasion."*

On the 18th of March Mr. Livingston wrote, "We are here (at Paris) all in a bustle, not knowing whether we are to have war or peace. In England they expect war certainly. Here they are very anxious to avoid it. . . . Peace will in no event last long. I frankly confess that though I believe a war would be extremely dangerous for Great Britain, yet I think her ruin inevitable if France continues ten years at peace." In his letter of March 24th he said, "The question of war yet remains undetermined. Here there is an earnest and sincere desire to avoid it, as well in the government as the people." But Mr. Livingston evidently did not take into consideration the views or ambitions of the first consul, although he had written on September 1, 1802, "one man is everything."†

The earliest premonitions of the important changes to come were first observed by Mr. Livingston on April 11, and presented in his letter of that date to Mr. Madison. He said, "The affair of New Orleans gave me two very important strings to touch: I endeavored to convince the government that the United States would avail themselves of the breach of the treaty to possess themselves of New Orleans and the Floridas; that Britain would never suffer Spain to grant the Floridas to France, even were she so disposed, but would immediately seize upon them as soon as the transfer was made; that without the Floridas Louisiana would be indefensible, as it possesses not one port even for frigates; and I showed the effect of suffering that important country to fall into the hands of the British, both as it affected our country and the naval force of all Europe. These reasons, with the probability of war, have had, I trust, the desired effect. M. Talleyrand asked me this day, when pressing the subject, whether we wished to have the whole of Louisiana. I told him no; that our wishes extended only to New Orleans and the Floridas; that the policy of

* Memoirs of Lord Whitworth.

† American State Papers.

France, however, should dictate (as I have shown in an official note) to give us the country above the river Arkansas, in order to place a barrier between them and Canada. He said that if they gave New Orleans the rest would be of little value; and that he would wish to know 'what we would give for the whole.' I told him it was a subject I had not thought of; but that I supposed we should not object to twenty millions (livres), provided our citizens were paid. He told me that this was too low an offer, and that he would be glad if I would reflect upon it and tell him tomorrow. I told him that, as Mr. Monroe would be in town in two days, I would delay my further offer until I had the pleasure of introducing him. He said that he did not speak from authority, but that the idea had struck him. I have reason, however, to think that this resolution was taken in council on Saturday. On Friday I received Mr. Ross's motion (made in the United States Senate for the adoption of his resolutions: see elsewhere): I immediately sent it to M. Talleyrand, with an informal note expressive of my fears that it would be carried into effect; and requesting that General Bernadotte (minister to be sent to America) might not go till something effectual was done. I also translated it, and gave it to General Bernadotte, and pressed upon him the necessity of asking express instructions, in case he should find the island (of New Orleans) in possession of the Americans. He went immediately to Joseph Bonaparte. These I believe were exciting causes to the train we are now in, and which I flatter myself we shall be able on the arrival of Mr. Monroe to pursue to effect. I think from every appearance that war is very near at hand; and under these circumstances I have endeavored to impress the Government that not a momemt should be lost lest Britain should anticipate us. I have used every exertion with the Spanish ambassador and Lord Whitworth to prevent the transfer of the Floridas; and wrote to Mr. Graham (at Madrid) in Mr. Pinckney's absence, to give every attention to that object, and to avail himself of the coolness which subsisted between the French ambassador and the Prince of Peace (Godoy). This has retarded the negotiation; and unless they get Florida, I have convinced them Louisiana is worth little. I would rather have confined our views to smaller objects; and I think that if we succeed, it would be good policy to exchange the west bank of the Mississippi with Spain for the Floridas, reserving New Orleans. Perhaps, however, I am too sanguine in my expectations: we will not, therefore, dispose of the skin till we have killed the bear."*

* American State Papers.

From this extract it will be seen how little Mr. Livingston comprehended what was at that moment transpiring between the French leaders. But no one could have forecast coming events, although they cast their shadows before. He seemed in his letter of April 11 to think that his efforts were succeeding, and that he was instrumental in retarding the negotiations at Madrid for the cession of the Floridas to France between the French ambassador and Godoy. Notwithstanding that Talleyrand broached the subject of the sale of all of Louisiana, Mr. Livingston did not see, had no way of seeing, that its sale was practically tendered. He had been instructed at the outset to use every endeavor to prevent the transfer of Louisiana to France; and after the transfer was known to have been made had employed all his powers to induce France to relinquish the province; and when he found that object out of the question had sought with arguments and threats, under limited authority, to gain the recognition of substantial advantages for America. Consequently, when Talleyrand asked him if he wished the whole of Louisiana, he, nor dreaming what was coming, answered "no," because the worthlessness of Louisiana without the Floridas had been the burden of his own arguments, and it would appear like stultification to show an eagerness, under the circumstances, to possess the whole province. It is no doubt true that the resolutions of Mr. Ross in the United States senate, when presented to the French government with the views of Mr. Livingston that they were likely to be carried into effect and possession be taken of New Orleans by the Americans, had much to do in hastening the negotiations of cession.

The United States, from the moment it was learned that France had secured Louisiana, was intensely opposed to the transfer, and this feeling grew in strength as time passed and the rapacity and power of Napoleon were developed. The government soon realized that war with France would almost certainly result from the transfer, owing to Napoleon's policy of hostility to every resistance to this ambition for dominion. The French government was told of this sentiment in the United States. It was also informed at divers times and in various ways that the United States would try to maintain, peaceably if possible, forcibly if necessary, their rights on the Mississippi as stipulated in the Spanish treaty of 1795. Every effort was made by Mr. Livingston to secure from the French government an acknowledgment of the rights of the United States on the Mississippi, but without avail. Any commitment on that question was rigidly avoided by France. Unquestionably, Napoleon, who expected until the last moment

to take possession of Louisiana and make it a powerful colony, did not care to handicap his future arrangements and policy in America with any questionable or unnecessary promises to the United States. As his policy would most certainly have been to close the Mississippi against the United States, and as the United States would never have surrendered that right but "with their political existence," as Mr. Livingston informed the French minister of state, the result would undoubtedly have been war. Of course Napoleon realized that the United States alone would prove no mean antagonist, and he was further well aware that in case of such a war Great Britain and the United States would join hands against him. Therefore, as he came to see that war with Great Britain was inevitable, he likewise realized that the United States would not hesitate, while all the strength of France was engaged to crush or hold in check her ancient enemy, to take possession of the mouth of the Mississippi, with force if necessary. It was not necessary to tell Napoleon that this could easily be done by the United States, although such a finality was laid before him. Owing, then, to the certainty of losing Louisiana to the United States in case of a war with Great Britain, and to the inevitableness of such a war, his only course was to get rid of Louisiana before the commencement of hostilities. He could return it to Spain, or could sell it to the United States. There would be no immediate gain by returning it to Spain; he could secure immediately from the United States a goodly sum. Hence his determination to sell.

The United States, not knowing of the state of the negotiations at Paris, instructed Messrs. Livingston and Monroe on April 18, 1803, to press the French government for a settlement of rights and claims. They were instructed that "If the French Government, instead of friendly arrangements or views, should be found to meditate hostilities, or to have formed projects which will constrain the United States to resort to hostilities, such communications are then to be held with the British Government as will sound its dispositions and invite its concurrence in the war. Your own prudence will suggest that the communications be so made, as, on one hand, not to precipitate France into hostile operations, and, on the other, not to lead Great Britain from the supposition that war depends on the choice of the United States, and that their choice of war will depend on her participation in it. If war is to be the result, it is manifestly desirable that it be delayed until the certainty of this result can be known, and the legislative and other provisions can be made here; and also of

great importance that the certainty should not be known to Great Britain, who might take advantage of the posture of things to press on the United States disagreeable conditions of her entering into the war. . . . Notwithstanding the just repugnance of this country to a coalition of any sort with the belligerent politics of Europe, the advantages to be derived from the co-operation of Great Britain in a war of the United States at this period against France and her allies, are too obvious and too important to be renounced. . . . The price which she may attach to her co-operation cannot be foreseen, and therefore cannot be the subject of full and precise instructions. It may be expected that she will insist at least on a stipulation that neither of the parties shall make peace or truce without the consent of the other; and as such an article cannot be deemed unreasonable and will secure us against the possibility of her being detached in the course of the war by seducing overtures from France, it will not be proper to raise difficulties on that account. It may be useful, however, to draw from her a definition as far as the case will admit of the objects contemplated by her that whenever with ours they may be attainable by peace, she may be duly pressed to listen to it. . . . On another point, it may be answered at once that Great Britain shall enjoy a free trade with all the ports to be acquired by the United States on the terms allowed to the most favored nations in the ports generally of the United States. If made an essential condition, you may admit that in the ports to be acquired within the Mississippi, the trade of her subjects shall be on the same footing for a term of about ten years with that of our own citizens. . . . The anxiety which Great Britain has shown to extend her dominion to the Mississippi, the uncertain extent of her claims from north to south beyond the western limits of the United States, and the attention she has paid to the northwest coast of America, make it probable that she will connect with a war on this occasion a pretension to the acquisition of the country on the west side of the Mississippi, understood to be ceded by Spain to France, or at least of that portion of it lying between that river and the Missouri. The evils involved in such an extension of her possessions in our neighborhood and in such a hold on the Mississippi, are obvious. The acquisition is the more objectionable as it would be extremely displeasing to our western citizens, and as its evident bearing on South America might be expected to arouse all the jealousies of France and Spain, and to prolong the war on which the event would depend. Should this pretension, therefore, be pressed, it must be resisted as altogether

repugnant to the sentiments and to the sound policy of the United States. . . . A separate letter to you is enclosed, authorizing you to enter into such communications and conferences with British ministers as may possibly be required by the conduct of France. The letter is made a separate one, that it may be used with the effect but without the formality of a commission. It is hoped that sound calculations of interest as well as a sense of right in the French Government, will prevent the necessity of using the authority expressed in this letter. . . . If France should avow or evince a determination to deny to the United States the free navigation of the Mississippi, your consultations with Great Britain may be held on the ground that war is inevitable. Should the navigation not be disputed and the deposits alone be denied, it will be prudent to adapt your consultations to the possibility that congress may distinguish between the two cases and make a question how far the latter right may call for an instant resort to arms, or how far a procrastination of that remedy may be suggested and justified by the prospect of a more favorable conjuncture. . . . These instructions have thus far supposed that Great Britain and France are at peace and that neither of them intend at present to interrupt it."*

Thus it will be seen that the United States, whether they were joined by Great Britain or not, intended to conduct war if necessary against France, to gain the rights claimed on the Mississippi. Of course, an active alliance with Great Britain, if it could be secured without too severe a sacrifice, was a result earnestly to be desired. Should war commence between France and England, the United States could no doubt either form an active alliance with the latter or secure valuable concessions on the Mississippi, upon liberal terms, from the former. War between France and England, it was seen, could not result otherwise than to the vast advantage of the United States. But the international complications which had been heating with such intensity for so many months, were now almost ready to boil over. The crisis was reached, as is shown by the following letters to the state department from Mr. Livingston:

"Paris, April 13, 1803, midnight.

"I have just come from the Minister of the Treasury. Our conversation was so important, that I think it necessary to write it, while the impressions are strong upon my mind; and the rather,

* American State Papers.

as I fear that I shall not have the time to copy and send this letter, if I defer it till morning.

"By my letter of yesterday, you learned that the minister asked me whether I would agree to purchase Louisiana, &c.; on the 12th, I called upon him to press this matter further. He then thought proper to declare that his proposition was only personal, but still requested me to make an offer; and, upon my declining to do so as I expected Mr. Monroe the next day, he shrugged up his shoulders, and changed the conversation. Not willing, however, to lose sight of it, I told him I had been long endeavoring to bring him to some point; but, unfortunately, without effect: that I wished merely to have the negotiation opened by any proposition on his part; and, with that view, had written him a note which contained that request, grounded upon my apprehension of the consequence of sending out General Bernadotte without enabling him to say a treaty was begun. He told me he would answer my note, but that he must do it evasively, because Louisiana was not theirs. I smiled at this assertion, and told him that I had seen the treaty recognizing it; that I knew the Consul had appointed officers to govern the country; and that he had himself told me that General Victor was to take possession; that, in a note written by the express order of the First Consul, he had told me that General Bernadotte was to treat relative to it in the United States, &c. He still persisted that they had it in contemplation to obtain it, but had it not. I told him that I was very well pleased to understand this from him, because, if so, we should not commit ourselves with them in taking it from Spain, to whom, by his account, it is still belonged; and that, as we had just cause of complaint against her, if Mr. Monroe concurred in opinion with me, we should negotiate no further on the subject, but advise our Government to take possession. He seemed alarmed at the boldness of the measure, and told me he would answer my note, but that it would be evasively. I told him I should receive with pleasure any communication from him, but that we were not disposed to trifle; that the times were critical, and though I did not know what instructions Mr. Monroe might bring, I was perfectly satisfied that they would require a precise and prompt notice; that I was very fearful, from the little progress I had made, that my Government would consider me as a very indolent negotiator. He laughed, and told me that he would give me a certificate that I was the most importunate he had yet met with.

"There was something so extraordinary in all this, that I did not detail it to you till I found some clue to the labyrinth, which

I have done, as you will find before I finish this letter; and the rather, as I was almost certain that I could rely upon the intelligence I had received of the resolution to dispose of this country.

"This day Mr. Monroe passed with me in examining my papers; and while he and several others were at dinner with me, I observed the Minister of the Treasury (Marbois) walking in my garden. I sent out Colonel Livingston to him; he told him he would return when we had dined. While we were taking coffee he came in; and, after being some time in the room, we strolled into the next room, when he told me he heard that I had been at his house two days before, when he was at St. Cloud; that he thought I might have something particular to say to him, and had taken the first opportunity to call on me. I saw that this was meant as an opening to one of those free conversations which I had frequently had with him. I accordingly began on the subject of the debt, and related to him the extraordinary conduct of the minister, &c. He told me that this led to something important, that had been curiously mentioned to him at St. Cloud; but, as my house was full of company, he thought I had better call upon him any time before eleven that night. He went away, and a little after, when Mr. Monroe took leave, I followed him. He told me that he wished me to repeat what I had said relative to M. Talleyrand's requesting a proposition from me as to the purchase of Louisiana. I did so; and concluded with the extreme absurdity of his evasions of that day, and stated the consequence of any delay on this subject, as it would enable Britain to take possession, who would readily relinquish it to us. He said that this proceeded upon a supposition of her making so successful a war as to be enabled to retain her conquests. I told him that it was probable that the same idea might suggest itself to the United States; in which case, it would be their interest to contribute to render her successful; and I asked whether it was prudent to throw us into her scale? This led to long discussions of no moment to repeat. We returned to the point: he said, that what I had told him led him to think that what the Consul had said to him on Sunday, at St. Cloud, (the day on which, as I told him, the determination had been taken to sell,) had more of earnest than he thought at the time; that the Consul had asked him what news from England? As he knew he read the papers attentively, he told him that he had seen in the London papers the proposition for raising fifty thousand men to take New Orleans. The Consul said he had seen it too, and had also seen that something was said about two millions of dollars being disposed among the people about him, to bribe

them, &c.; and then left him. That afterwards, when walking in the garden, the Consul came again to him, and spoke to him about the troubles that were excited in America, and inquired how far I was satisfied with his last note. Here some civil things were introduced, for which I presume I am more indebted to the minister's politeness than to his veracity; so let them sleep. He (Marbois) then took occasion to mention his sorrow that any cause of difference should exist between our countries. The Consul told him, in reply, "Well, you have the charge of the Treasury: let them give you one hundred millions of Francs, and pay their own claims, and take the whole country.' Seeing, by my looks, that I was surprised at so extravagant a demand, he added that he considered the demand as exorbitant, and had told the First Consul that the thing was impossible; that we had not the means of raising that. The Consul told him we might borrow it. I now plainly saw the whole business: first, the Consul was disposed to sell; next, he distrusted Talleyrand, on account of the business of the supposed intention to bribe, and meant to put the negotiation into the hands of Marbois, whose character for integrity is established. I told him that the United States were anxious to preserve peace with France; that, for that reason, they wished to remove them to the west side of the Mississippi; that we would be perfectly satisfied with New Orleans and the Floridas, and had no disposition to extend across the river; that, of course, we would not give any great sum for the purchase; that he was right in his idea of the extreme exorbitancy of the demand, which would not fall short of one hundred and twenty five millions; that, however, we would be ready to purchase, provided the sum was reduced to reasonable limits. He then pressed me to name the sum. I told him that this was not worth while, because, as he only treated the inquiry as a matter of curiosity, any declarations of mine would have no effect. If a negotiation was to be opened, we should (Mr. Monroe and myself) make the offer after mature reflection. This compelled him to declare, that, though he was not authorized expressly to make the inquiry from me, yet, that, if I could mention any sum that came near the mark, that could be accepted, he would communicate it to the First Consul. I told him that we had no sort of authority to a sum that bore any proportion to what he mentioned; but that, as he himself considered the demand as too high, he would oblige me by telling me what he thought would be reasonable. He replied that, if we would name sixty millions, and take upon us the American claims, to the amount of twenty more, he would

try how far this would be accepted. I told him that it was vain to ask anything that was so greatly beyond our means; that true policy would dictate to the First Consul not to press such a demand; that he must know that it would render the present Government unpopular, and have a tendency, at the next election, to throw the power into the hands of men who were most hostile to a connection with France; and that this would probably happen in the midst of a war. I asked him whether the few millions acquired at this expense would not be too dearly bought. He frankly confessed that he was of my sentiments; but that he feared the Consul would not relax. I asked him to press this argument upon him, together with the danger of seeing the country pass into the hands of Britain. I told him that he had seen the ardor of the Americans to take it by force, and the difficulty with which they were restrained by the prudence of the president; that he must easily see how much the hands of the war party would be strengthened, when they learned that France was upon the eve of a rupture with England. He admitted the weight of all this: 'But,' says he, 'you know the temper of a youthful conqueror; everything he does is rapid as lightning; we have only to speak to him as an opportunity presents itself, perhaps in a crowd, when he bears no contradiction. When I am alone with him, I can speak more freely, and he attends; but this opportunity seldom happens, and is always accidental. Try, then, if you cannot come up to my mark. Consider the extent of the country, the exclusive navigation of the river, and the importance of having no neighbors to dispute you, no war to dread.' I told him that I considered all these as important considerations, but there was a point beyond which we could not go, and that fell far short of the sum he mentioned.

"I asked him, in case of a purchase, whether they would stipulate that France would never possess the Floridas, and that she would aid us to procure them, and relinquish all right that she might have to them. He told me that she would go thus far. I added, that I would now say nothing more on the subject, but that I would converse with Mr. Monroe; and that I was sure to find him disposed to do everything that was reasonable or could be expected, to remove every cause of difference between the two countries. That, however, if any negotiation should go on, I would wish that the First Consul would depute somebody to treat with us, who had more leisure than the Minister for Foreign Affairs. I said this to see whether my conjectures

relative to him were well founded. He told me that as the First Consul knew our personal friendship, he having several times had occasion to speak of me and my family, and the principles that we held, he believed that there would be no difficulty, when this negotiation was somewhat advanced, to have the management of it put into his hands. . . . He earnestly pressed me to make some proposition that was so near the First Consul's as to admit his mentioning it to him. I told him that I would consult Mr. Monroe, but that neither he nor I could accede to his ideas on the subject. . . . ."

"Paris, April 17, 1803.

"On the 14th I called upon Mr. Monroe, to present him to the minister, who had, upon my application, fixed three o'clock that day for his reception.

"On waiting upon the minister, we found M. Marbois there, who told me that he had come to communicate to the minister what had passed between us, and that he greatly regretted the not being able to bring us to such an offer as he might mention to the First Consul. I told him that it was unnecessary to repeat what would compel us to limit our offers to a much more moderate sum, as I had already detailed them at large; and he knew they exceeded our means. We were very graciously received by the minister, whom I pressed to obtain as early a day as possible for the reception of Mr. Monroe, as time pressed, and we were anxious to conclude our business, for reasons arising out of the present disturbed state of America. He told me he would speak to the First Consul that night on the subject; and that he hoped some person would be appointed to treat with us, even before Mr. Monroe was presented. After a little general conversation, he took leave, in expectation that Mr. Monroe would be presented this day (Sunday), being a day of reception for the civil officers of the Government. The next day, Mr. Monroe and myself, after spending some time in consultation, determined to offer fifty millions, including our debts; we presumed it would be best only to mention forty in the first instance. This I accordingly did, in a conference I had on the 15th with M. Marbois. He expressed great sorrow that we could not go beyond that sum, because he was sure that it would not be accepted, and that perhaps the whole business would be defeated, which he the more feared, as he had just received a note from the minister, indicative of the Consul's not being quite pleased that he had so greatly lowered his original propo-

sition. He said that he saw our situation, and he knew that there was a point beyond which we could not go with safety to ourselves or the President; but he wished us to advance to that point. He said that he would, if I wished, go that very day to St. Cloud, and let me know the result. I reminded him of the Consul's promise to pay the debt. I placed in the strongest light his personal obligation on this subject; and desired him to urge it as an additional reason to conclude an agreement which would facilitate the means of doing it. The morning, which was yesterday, I again called to see him. He told me that he had been to St. Cloud; that the Consul received his proposition very coldly; and that I might consider the business as no longer in his hands, since he had given him no further powers; that he had urged the Consul's promise relative to the debt, which he admitted; but said, at the same time, he did not think it had exceeded three millions, though my letter expressly mentioned twenty. He expressed great sorrow upon the occasion; and advised me to press M. Talleyrand to present Mr. Monroe the next day (that is, this day); that he hoped that, if the Consul saw me, as he had a very particular esteem for me, he would renew the subject with me himself.

"I went to Mr. Monroe, and carried him to the minister, who had not returned from St. Cloud; and afterward went again, but could not see him. I dined with the Second Consul yesterday; and in the evening M. Marbois came in. I took him aside, and asked him if any thing further had passed; he said not; but, that as he was to go to St. Cloud the next day, it was possible that the Consul might touch upon the subject again; and that, if he did not, I might consider the plan as relinquished; and that, if I had any further proposition to make, it would be well to state it. I then told him, that on further conversation with Mr. Monroe, we had resolved to go to the greatest possible length, and that we would give fifty millions. He said he had very little hopes that any thing short of his propositions would succeed; but that he would make the best use of the arguments I had furnished him with, if an opportunity was offered; and if nothing was done the next day, I might conclude that the Consul had changed his sentiments; that, having given the kingdom of Etruria, whose revenues were twenty-five millions, in exchange for this country, it was natural that the First Consul should estimate it beyond its real value."*

* American State Papers.

As is stated in the Memoirs of Lucien Bonaparte, Napoleon had made up his mind as early as the 6th of April, 1803, to sell Louisiana to the United States.* It is related there that having told his brother Joseph of his intention, the latter vigorously opposed it and a quarrel resulted between the brothers. Joseph immediately went to Lucien and told him of the intention of Napoleon, the following being the language: "The General means to give up Louisiana." To which Lucien replied, "Bah, who'll buy it of him?" Joseph answered, "The Americans." Whereupon Lucien declared that the chambers would not give their consent. Joseph replied that Napoleon intended to get along without the consent of the chambers—meant to carry it through regardless of the chambers. The two brothers, Joseph and Lucien, talked the matter over several hours, and determined to oppose the sale of "Beautiful Louisiana." The next morning, April 7th, by agreement Lucien called upon Napoleon at the Tuileries, and found him engaged in taking his morning bath. A little later Joseph called, and thus the three brothers met in the bathroom, with Napoleon in the tub apparently greatly enjoying himself. Lucien had thought that Napoleon would not dare to sell Louisiana without parliamentary authority; and Joseph had thought he would dare to do so, but would desist when told of the disasters sure to result to the Bonaparte family from such a transaction. Neither of the brothers was wholly right. Joseph and Lucien hesitated for some time to mention the proposed sale of Louisiana, but finally did and were met with the announcement that such was the intention. Both declared their opposition to the sale. One complaint led to another until the interview resulted in a violent quarrel, in which the elder brother, Joseph, and Napoleon were the chief actors. Complaints led to recriminations until the brothers seemed on the point of a personal encounter. Finally Joseph made some extremely exasperating charge against Napoleon, whereupon the latter drenched him with water dashed from the bathtub, which proceeding ended their dispute for the time. In fact, as far as those two were concerned, the question was settled. The province would be sold. In subsequent interviews, Lucien could not prevail upon Napoleon not to sell Louisiana. But it must be observed that neither of the two brothers fully understood Napoleon's reason for selling. The Lucien memoirs show that they did not consider the absolute necessity of selling before

* Memoirs of Lucien Bonaparte; Harvard College Library.

the province should be captured either by the English or by the Americans. In regard to results, they either did not understand the situation of France and Louisiana at the time, or were kept in the dark on this particular point by Napoleon for purposes of his own. What the English might do or what the Americans might do seemingly had not entered their heads; but Napoelon knew the inevitable results; and history has since shown that had he not taken the course he did and sold Louisiana it would have been been taken possession of by the United States at the first movement of the English to send a fleet across the ocean for its conquest.

On the 10th of April, 1803, Easter Sunday, Napoleon called Barbé Marbois and Alexandre Berthier in for a private consultation regarding Louisiana. Both of these gentlemen were familiar with Louisiana and the United States, and he desired their views concerning the alienation of the province. Mr. Marbois favored the sale to the United States and stated his reasons therefor at great length, Napoleon listening attentively to all that he said, and asking an occasional question. Mr. Berthier opposed the sale and likewise presented his reasons at great length, to all of which Napoleon listened just as intently. Before they had made their statements he said: "I know the full value of Louisiana, and I have been desirous of repairing the fault of the French negotiator who abandoned it in 1763. A few lines of a treaty have restored it to me, and I have scarcely received it when I must expect to lose it. But if it escapes from me, it shall one day cost dearer to those who oblige me to strip myself of it than to those to whom I wish to deliver it. The English have successively taken from France Canada, Cape Breton, Newfoundland, Nova Scotia and the richest portions of Asia. They are engaged in exciting troubles in St. Domingo. They shall not have the Mississippi which they covet. Louisiana is nothing in comparison with their conquests in other parts of the globe, and yet the jealousy they feel at the restoration of this colony to the sovereignty of France, acquaints me with their wish to take possession of it, and it is thus that they will begin the war. They have twenty ships of war in the Gulf of Mexico; they sail over those seas as sovereigns, whilst our affairs in St. Domingo have been growing worse every day since the death of Leclerc. The conquest of Louisiana would be easy, if they only took the trouble to make the descent there. I have not a moment to lose in putting it out of their reach. I know not whether they are not already

there. It is their usual course, and if I had been in their place, I would not have waited. I wish, if there is still time, to take from them any idea that they may have of ever possessing that colony. I think of ceding it to the United States. I can scarcely say I cede it to them, for it is not yet in our possession. If, however, I leave the least time to our enemies, I shall only transmit an empty title to those republicans, whose friendship I seek. They only ask of me one town in Louisiana, but I already consider the colony as entirely lost, and it appears to me that in the hands of this growing power, it will be more useful to the policy and even to the commerce of France than if I should attempt to keep it."*

The discussion was continued far into the night, and terminated without other statement from Napoleon than the above. At daybreak the next morning Napoleon summoned Mr. Marbois, who had favored the sale of Louisiana, and asked him to read aloud the dispatches which had just been received from London. The information they contained showed that in all England naval and military preparations of every description were in progress "with extraordinary rapidity." Napoleon was intensely moved by the dispatches. He said: "The English ask of me Lampedonso, which does not belong to me, and at the same time wish to keep Malta for ten years. This island, where military genius has exhausted all the means of defensive fortification to an extent of which no one without seeing it can form an idea, would be to them another Gibraltar. To leave it to the English would be to give up to them the commerce of the Levant, and to rob my southern provinces of it. They wish to keep this possession and have me immediately vacate Holland. Irresolution and deliberation are no longer in season. I renounce Louisiana. It is not only New Orleans that I will cede; it is the whole colony without any reservation. I know the price of what I abandon, and I have sufficiently proved the importance that I attach to this province, since my first diplomatic act with Spain had for its object the recovery of it. I renounce it with the greatest regret. To attempt obstinately to retain it would be folly. I direct you to negotiate this affair with the envoys of the United States. Do not even await the arrival of Mr. Monroe; have an interview this very day with Mr. Livingston; but I require a great deal of money for this war, and I would not like to commence it with new contributions.

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* History of Louisiana; Barbé Marbois.

For a hundred years France and Spain have been incurring expenses for improvements in Louisiana, for which its trade has never indemnified them. Large sums which will never be returned to the treasury, have been lent to companies and agriculturalists. The price of all these things is justly due to us. If I should regulate my terms according to the value of these vast regions to the United States, the indemnity would have no limits. I will be moderate in consideration of the necessity in which I am of making a sale. But keep this to yourself. I want fifty millions (of livres), and for less than that sum I will not treat. I would rather make a desperate attempt to keep these fine countries. Tomorrow you shall have your full powers."*

At this point of the interview Mr. Marbois interposed some observations in regard to whether the souls of the people in Louisiana could be made the subject of contract and sale, whereupon he was interrupted by Napoleon, who said: "You are giving me in all its perfection the ideology of the law of nature and of nations. But I require money to make war on the richest nation of the world. Send your maxims to London. I am sure they will be greatly admired there, and yet no great attention is paid to them when the question is the occupation of the finest regions of Asia." Continuing, he said: "Mr. Monroe is on the point of arriving. To this minister going two thousand leagues from his constituents, the President must have given, after defining the object of his mission, secret instructions more extensive than the ostensible authorization of Congress, for the stipulation of the payments to be made. Neither this minister nor his colleague is prepared for a decision which goes infinitely beyond anything that they are about to ask of us. Begin by making them the overture without any subterfuge. You will acquaint me, day by day, hour by hour, of your progress. The cabinet of London is informed of the measures adopted at Washington, but it can have no suspicion of those of which I am now making. Observe the greatest secrecy, and recommend it to the American ministers; they have not a less interest than yourself in conforming to this counsel. You will correspond with M. de Talleyrand who alone knows my intentions. If I attended to his advice France would confine her ambition to the left bank of the Rhine, and would only make war to protect our weak states and to prevent any dismemberment of her possessions. But he also admits that the cession of Louisiana is not

* History of Louisiana; Barbé Marbois.

a dismemberment of France. Keep him informed of the progress of this affair."

As before stated, the overtures were made, as suggested by Napoleon, to Mr. Livingston before the arrival of Mr. Monroe, but the latter, arriving the next day, was at once informed of the situation of affairs. Amid the surprise and confusion necessarily kindled in the minds of both of the American envoys, they still instantly perceived the importance and value of the overtures and were not one whit behind in meeting them in the spirit in which they were offered. The conferences were frequent and the deliberations rapid. There were three points to be considered: 1. The cession of the province. 2. The price to be paid for it. 3. The claimed indemnity for prizes and cargoes. It was at once revealed that the American envoys were not clothed with sufficient powers to contract for the whole of Louisiana. Such a contingency had not entered the minds of the American government. At best they had only expected to get the island of New Orleans, or West Florida, or both. But it was realized by all that it would be too late to await the arrival of sufficient instructions from Philadelphia. In this emergency, the Americans resolved to exceed their instructions, accept the cession, and take the chances of the ratifications of their actions by the president and congress. The consent of the president and the senate would be necessary for the ratification of the treaty; but the house would have the disposal of the financial measures necessary to pay for the province. Though not without misgivings as to the outcome at Philadelphia, the envoys resolved to take the risk. Delay meant that England would be in possession before three months should elapse. The Americans had brought with them the draft of a treaty, but as the whole aspect was changed by the French overtures, the draft proposed by the latter was used as the basis. In fact, the draft prepared by Napoleon himself, a copy of which may be found herein, was the foundation of the negotiations. The first serious obstacle encountered was in regard to the limits of Louisiana. The Americans asked for the customary guaranty of the property they were about to acquire by purchase; but were told by the French envoy that the limits of Louisiana had never been fully and wholly defined; that they would have to take the province as France had received it from Spain in 1800. The treaty of San Ildefonso was produced and carefully gone over, the language studied, and the chances were fully weighed. The Americans saw that if every allowance was made for curtailment,

they still would receive an immense and magnificent tract of country, more than sufficient to satify all their future requirements. The French envoy avoided committing himself on the subject of limits, merely stating that the United States would receive what had been retroceded to France.. However, in one of the conferences he made the statement that although the Bishopric of Louisiana had been extended to the Pacific ocean, the province itself, concerning the rights of property and sovereignty, had not thus been extended. In this connection M. Marbois afterward said: "If in appearing to be resigned to these general terms (of the treaty of San Ildefonso) through necessity, the American plenipotentiaries considered them really preferable to more precise stipulations, it must be admitted that the event justified their foresight. The shores of the Western ocean were certainly not included in the cession; but the United States are already established there (this statement was made about the year 1830)." Napoleon also said in this connection that "If an obscurity did not already exist, it would perhaps be good policy to put one there." M. Marbois at first put the price of the cession at one hundred millions of livres; but when the Americans said this price was prohibitory he dropped to eighty millions. The Americans finally yielded this figure upon the condition that twenty millions of the eighty millions should be used to liquidate the American claims. This was agreed to by M. Marbois. It was agreed that the original drafts of the treaty should be in the French language. The originals were completed on the 30th of April, there being three of them, but as they had to be copied, the signatures were not appended until the 3d of May.*

It is a noteworthy and remarkable fact that the respective envoys were greatly elated at the harmony of the proceedings and the completion of the cession. All were impressed with the momentous character of the negotiation. M. Marbois himself afterward said: "A sentiment superior even to glory seemed to animate the three ministers and never perhaps did negotiators taste a purer joy." That is extremely strong language, and betokens that they were in a state of spiritual ecstacy, so impressed were they with the extraordinary nature of the act. As soon as the treaties were signed, all spontaneously arose and shook hands with intense feeling. Mr. Livingston, who had labored so long and earnestly for the good of his country, said: "We have lived long, but this is the noblest work of our whole

* History of Louisiana; Barbé Marbois.

lives. The treaty which we have just signed has not been obtained by art or dictated by force; equally advantageous to the two contracting parties, it will change vast solitudes into flourishing districts. From this day the United States take their place among the powers of the first rank; the English lose all exclusive influence in the affairs of America."

Napoleon had followed the progress of the negotiations with all the interest and earnestness of his impetuous and decisive nature, inspired as he was with intense regret at the loss of the province and the imperative necessity of speedy action. He was greatly pleased when the negotiations were fully completed; but here the contradictory and inexplicable qualities of his nature revealed themselves. He had himself set the price of the cession at the minimum of fifty millions of livres. M. Marbois afterward said of him at this point that "He learned that the eighty millions had been agreed on; but that they were reduced to sixty millions by the deduction stipulated to be previously made for the settlement of the debt due by France to the Americans. Then forgetting, or feigning to forget, the consent that he had given, he said with vivacity, 'I would that these twenty millions be paid into the treasury. Who has authorized you (Marbois) to dispose of the money of the State? The rights of the claimants cannot come before our own.' But when his attention was called to his own figures of fifty millions for the treasury and that really sixty millions were to be put there, he said: 'It is true; the negotiation does not leave me anything to desire; sixty millions for an occupation that will not perhaps last but a day. I would that France should enjoy this unexpected capital, and that it may be employed in works beneficial to her marine.'" Later Napoleon said: "This accession of territory strengthens forever the power of the United States; and I have just given to England a maritime rival that will sooner or later humble her pride."

To show that Napoleon was right as to the imminency of war between France and England, it is only necessary to state that the respective ministers of the two countries left for home on the 17th of May, and that hostilities were begun by France on the 22d of May by the capture of some English merchantmen, and on the same day the treaty of cession was ratified by Napoleon without waiting for the action of the United States. The transfer was made none too soon.

The American envoys formally communicated to congress on May 13 that they had concluded with France a treaty for the

whole of the province of Louisiana and gave their reasons to justify them in thus exceeding their instructions. They stated that the first consul at the outset had expressed the wish to cede the whole and not a part; and that as they proceeded with the negotiation they found "that Mr. Marbois was absolutely restricted to the disposition of the whole and that he would treat for no less a portion."* This forced the Americans to consider the cession of the whole. They evidently were careful to view so important an acquisition from every standpoint that was likely to affect the United States, all of which was set forth in their letter of May 13. They said: "By this acquisition, which comprises within our limits this great river and all the streams that empty into it from their sources to the ocean, the apprehension of disasters is banished for ages from the United States. We adjust by it the only remaining known cause of variance with this very powerful nation (France); we anticipate the discontent of the great rival of France, who would probably have been wounded at any stipulation of a permanent nature which favored the latter and which it would have been difficult to avoid, had she retained the right bank. We cease to have a motive of urgency at least for inclining to one Power to avert the unjust pressure of another. We separate ourselves in a great measure from the European world and its concerns, especially its wars and intrigues. We make, in fine, a great stride in real and substantial independence, the good effect whereof will we trust be felt essentially and extensively in all our foreign and domestic relations. Without exciting the apprehensions of any Power, we take a more imposing attitude with respect to all. The bond of our Union will be strengthened and its movements become more harmonious by the increased purity of interest which it will communicate to the several parts which compose it. . . . Louisiana was acquired of Spain by France in exchange for Tuscany, which latter is settled by treaty on the son-in-law of the King of Spain, with the title of King of Etruria, and was estimated in the exchange in consideration of its revenue at one hundred millions of francs. The First Consul thought he had made an advantageous bargain in that exchange, as appears by the high idea which he entertained of its value as shown on many occasions. Louisiana was the territory which he promised in his proclamation at the peace as an asylum to those who had become unfortunate by the revo-

* American State Papers.

lution, and which he spoke of as vast and fertile. When he made up his mind to offer the cession of it to the United States, it was contemplated to ask for it one hundred millions, exclusive of the debts they owed to our citizens, which they proposed we should pay, with a perpetual exemption from foreign duties on the manufactures, productions and vessels of France and Spain in the ports of the ceded territory. From that demand, however, he receded under the deliberations of his own cabinet; for the first proposition which M. Marbois made to us was that we should pay eighty millions, sixty of which in cash, the balance to our citizens, the whole in one year in Paris, with a perpetual exemption from foreign duties as above. The modification in the mode of payment, that is, by stock (for from the quantum he never would depart) and the limitation of the term of the duties to twelve years, with the proviso annexed to it, which was introduced into the treaty with every other change from his project, was the effect of negotiation and accommodation, in which we experienced on his part and on that of his government a promptitude and candor which were highly grateful to us. . . . Permit us to express an earnest wish that the President and Senate may decide with the least possible delay on the treaty and conventions which we have concluded and have the pleasure to transmit you. If it is the sense of our Government to ratify them, the sooner that fact is known to this Government the better its effect will be."

Just before the news of the cession of Louisiana to the United States reached the president, the attitude of Great Britain concerning that province and the Floridas became a matter of much solicitude to the American authorities. The president had been informed that in case of a war between France and Great Britain the latter would endeavor to take possession of New Orleans. In such an event the question arose, How would such possession affect the rights of the United States in that quarter? It was intimated by the British minister that the United States might expect in that event better terms than they had expected from either France or Spain. This intimation may have been made in good faith, but it was also made no doubt to gain the good will of the United States. It was intimated also that the United States should make as little concession to France as possible "on points disagreeable to Great Britain." Mr. Madison instructed the American envoys to France that should the question arise "how far in a state of war one of the parties can of right convey territory to a neutral Power, and

thereby deprive its enemy of the chance of conquest incident to war, especially when the conquest may have been actually projected, it is thought proper to observe to you, first, That in the present case the project of peaceable acquisition by the United States originated prior to the war, and consequently before a project of conquest could have existed; second, that the right of a neutral to procure for itself by a bona fide transaction property of any sort from a belligerent Power, ought not to be frustrated by the chance that a rightful conquest thereof might thereby be precluded."*

As soon as possible after the conclusion of the cession of Louisiana to the United States, Messrs. Livingston and Monroe lost no time in acquainting the president with all that had transpired. They likewise promptly informed Mr. King, the American minister to Great Britain, of the cession, in order that the latter might check any intended expedition of the British against New Orleans. On May 7, Mr. King had written from London that "in case of war (between France and England) it is the purpose of this Government to send an expedition to occupy New Orleans. If it be ceded to us (the United States) would it not be expedient openly or confidentially to communicate the fact here? I have reason to be satisfied that it would prevent the projected expedition."† This letter occasioned the prompt action of Messrs. Livingston and Monroe. They further told Mr. King that he might inform the English government that in framing the cession treaty care had been taken not to infringe any of the rights of Great Britain to the navigation of the Mississippi. On May 15, this information was conveyed by Mr. King to the British ministry, who a little later told him that it met the approbation of the king.

In a communication to Charles Pinckney dated, Aranjuez, May 4, 1803, Mr. Cervallos, Spanish minister of state, said: "The system adopted by His Majesty not to disposses himself of any portion of his States, deprives him of the pleasure of assenting to the cessions which the United States wish to obtain by purchase, as I have intimated for their information to the Marquis of Casa Yrujo. By the retrocession made to France of Louisiana, this Power regains the said province with the limits it had, and saving the rights acquired by other Powers. The United States can address themselves to the French Gov-

* American State Papers.

† Diplomatic Correspondence.

ernment to negotiate the acquisition of territories which may suit their interest."* This was the first definite information which Mr. Pinckney received from Spain to show that his efforts to secure concessions on the Mississippi from that government were wholly wasted; for here was an absolute acknowledgement that the province had passed to France, and here was the singular observation that the United States must go to Paris to secure the concessions desired on the Mississippi. The above statement of Mr. Cervallos, without straining the natural meaning of the language, may be construed to embrace the admission that West Florida was included in the retrocession of Louisiana to France, because Mr. Pinckney had asked only for West Florida—that for many months had been the sole and announced object of his mission—and was now told, in answer to his importunities, to go to France, to whom Louisiana had been retroceded. Why go to France after West Florida if the latter was not included in the Louisiana retroceded? Was this not an inadvertent admission by the Spanish minister that West Florida had passed to France with the retrocession of Louisiana?

In a communication dated May 12, 1803, Mr. Livingston expressed the opinion that, at the time Napoleon had read with much attention his memorials sent to him through the favor of his brother Joseph, "they had determined to let us have New Orleans and the territory above the Arkansas in exchange for certain commercial advantages, and that if they could have concluded with Spain, we should also have had West Florida."† This may have been true, because about the same time the interdiction at New Orleans was ordered revoked, and Mr. Livingston was accorded far better treatment by the French minister and the first consul. As early as the first of February, 1803, something had occurred to change the attitude of the French leaders toward the Americans. Mr. Livingston was shown high privileges and distinguished personal considerations. He was led to believe that his efforts would prove successful to a reasonable degree in case the Floridas could be secured from Spain by France. He soon became aware of the fact that the first consul "had conceived an idea that by taking possession of the country (Louisiana) he could more advantageously treat with our Government;" and that "Mr. Talleyrand accordingly told me several times, in general terms, that everything would

* This statement should be borne in mind.

† This is further proof that the interdiction was upon the order of France.

be arranged, but that they must first take possession." Mr. Livingston further said: "What I believe principally drove them to this measure was the promise which the First Consul had hastily made me to pay our debt fully and promptly, and which he found himself in no situation to fulfill and yet knew not how to elude, as I pressed it at every turn." The attitude of congress and the threatened rupture with Great Britain, Mr. Livingston stated, contributed to the conclusions of the first consul to sell Louisiana.

It was stated by Mr. Livingston on June 3, "that since the ratification (of the cession treaty) we have had a great deal of trouble with it, an opinion prevailing that we have made too favorable a bargain. . . . I must earnestly press you, if you think the object important, to get the ratification as soon as possible and to do all that on our part remains to be done. During this transaction I have thought it improper to press any other business that might excite the smallest irritation. How happy, my dear sir, are we to have concluded a treaty which will forever exclude us from the politics of this stormy quarter of the globe. I hope that you will not let it totally pass through your hands."

The importance of speedy action on the treaty was again called to the attention of the president by Messrs. Livingston and Monroe in a letter dated June 7. In order to prevent any possible accident and to insure the prompt arrival of the treaty papers in Washington, the American envoys sent the originals and two copies by three different messengers. On July 14, the one sent by Mr. Hughes was placed in the hands of President Jefferson. Some misgivings having arisen in the minds of the French authorities concerning the security of France as to the payments to be made for Louisiana and the transfer of the province to the United States, efforts were made by M. Marbois, at the instigation of the first consul, to correct any possible misunderstanding. The American envoys were given to understand that the first consul considered the province worth from three to four hundred millions of livres.* In other ways it was intimated to them that they had made a splendid bargain for themselves and that many Frenchmen were sorry of the cession and would be pleased to learn that the treaty had not been ratified by the United States. This alarmed the American envoys, who in all of their letters of that date, urged congress and the

* American State Papers.

president to ratify the treaty and do it quickly. They wrote June 7: "We thought we could discern some symptoms of discontent in the Government (of France) with the bargain it had made. The letter from M. Marbois left no doubt on that head: We are convinced that if the transaction was not complete, or was within the reach of the Government, it would not take place even on terms very different from those stipulated. There is much reason to believe that this letter was written not solely for the purpose of manifesting a sentiment of regret at what had been done but to create difficulties and embarrass the transaction in the execution of it. * * We learned from the minister of foreign affairs that the first consul considered the ratification as under his control till the exchange took place, and that he might annex to it such conditions as appeared to him to be proper; that he claimed every act stipulated on the part of the United States to be performed strictly within the terms specified, or on failure that the parties be restored to the state they were in if the treaties were never made. We asked him what had created any doubt on that point; he said that the clause in the article of the convention respecting the payment of sixty millions of francs to France, which was made dependent on the delivery of possession of the country to our commissary, might by accident or other causes become nugatory; the Spaniards might not surrender it at once, the British might take it, etc. We told him that these things were contemplated by the parties when the treaties were made and provided for; that we could not add a new article to the treaty or explain any one in it, since it must be explained by itself only; that delays which proceeded from bad faith were those only for which our Government was responsible; that such as were unavoidable attached to them no blame and could not affect the treaty. He replied that after the example of our Government in the last treaty, the Consul might nevertheless annex a condition to the ratification explanatory of his sense of it, which he would do if we did not satisfy him either with respect to the prompt manner in which the treaty would be executed by our Government, or agree to expunge the terms in that convention which respected taking possession of the territory. We did not fail to remark that the treaty must stand as it was to be adopted, rejected or modified by the parties having the right to do the same and not by us."

The American envoys thereupon gave the best assurance they could of the good conduct of the United States, but at the same time urged the authorities in America to lose not a moment to

ratify the treaty. "It is our earnest wish and advice, if the treaties are approved by the President, that he convene the Congress to provide the funds for an immediate compliance with them. It is best to leave nothing to hazard. The surrender of the posts ought to precede the creation of the fund; but as there will be no doubt on that point after taking the necessary measures, we would consider it as done and act accordingly. If we execute our part strictly within the terms specified, the transaction is at an end; there will be no obstacle from this quarter. . . . We cannot too strongly impress an idea, if our conduct is approved, of the most prompt execution of the stipulations to be performed on our part and of a course of proceeding which leaves nothing to chance, by giving any cause of complaint to this Government." To protect itself the French government instructed its minister at Washington that, on exchanging the ratifications with the United States, he should declare such ratifications void, unless the funds, etc., were created by congress in the term stipulated.

In a communication dated June 25, Mr. Livingston wrote: "I hope that nothing will prevent your immediate ratification without altering a syllable of the terms. If you wish anything changed, ratify unconditionally and set on foot a new negotiation. Be persuaded that France is sick of the bargain; that Spain is much dissatisfied, and that the slightest pretense will lose you the treaty. Nothing has raised the reputation of our country in Europe so high as the conduct of our Government upon this occasion, both at home and abroad."* In answer to a complaint from Mr. Livingston that Mr. Monroe had been given greater powers than he, Mr. Madison wrote on July 29: "The difference in the diplomatic titles given to Mr. Monroe from that given to you and which you understood to have ranked him above you, was the result merely of an error in the clerk who copied the document, and which escaped attention when they were signed. It was not the intention of the President that any distinction of grade should be made between you." Mr. Livingston was instructed to investigate thoroughly the question of the boundaries of Louisiana.

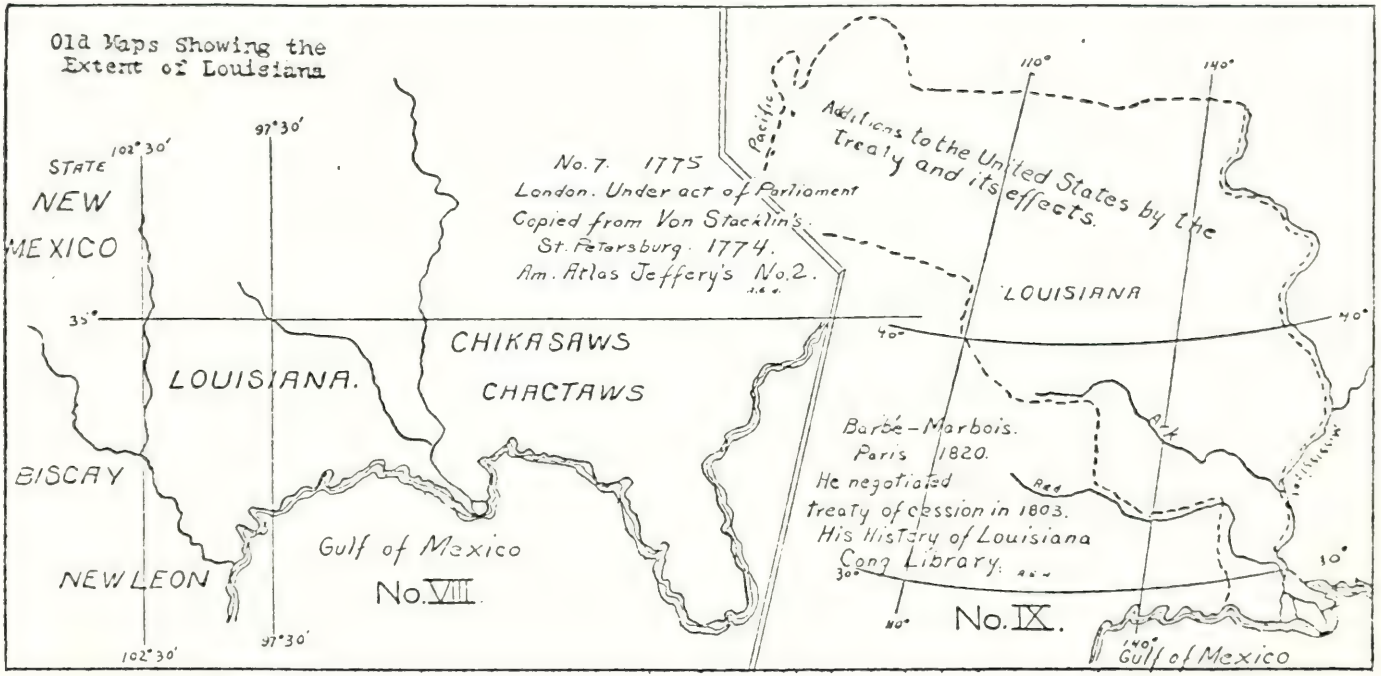
The act of Messrs. Livingston and Monroe in securing the cession of Louisiana, though wholly beyond their instructions and authority, met the approval of the Jeffersonian administration and generally of the people of the United States. It cannot be

* Diplomatic Correspondence.

said to have been the result of the good work of the envoys though the memorials of Mr. Livingston indicated to France a would-be purchaser; nor was it brought about by the statesmanship of Mr. Jefferson, though he possessed to an eminent degree such qualities; neither did the arrival of Mr. Monroe in Paris have anything to do with fixing in the mind of the first consul the determination to sell, because the conclusion to dispose of the whole of the province instead of a part was unalterably reached by Napoleon some days before the arrival of Mr. Monroe. The determination to sell resulted from the conclusion that France was certain soon to lose the province either to England or the United States. As between the two, France, of course, had but one choice, even if the conditions had been the same or similar, which they were not. It would pass to England as the result of war, to the United States for a consideration. Its value was known to Napoleon, but more was not asked, because the chances were that the American envoys would not pay more without too long a wait, and because great haste was necessary to forestall the British from taking possession of New Orleans. Thus the acquisition of Louisiana by the United States was the unexpected and extraordinary result of the international situation in Europe.

The American envoys were informed by Mr. Madison that their acts were approved by the administration. He wrote: "In concurring with the disposition of the French Government to treat for the whole of Louisiana, although the western part of it was not embraced by your powers, you were justified by the solid reasons which you give for it; and I am charged by the President to express to you his entire approbation of your so doing.* This approbation is in no respect precluded by the silence of your commission and instructions. When these were made out the object of the most sanguine was limited to the establishment of the Mississippi as our boundary. It was not presumed that more could be sought by the United States, either with a chance of success or perhaps without being suspected of a greedy ambition, than the island of New Orleans and the two Floridas, it being little doubted that the latter was or would be comprehended in the cession from Spain to France. To the acquisition of New Orleans and the Floridas, the provision was therefore accommodated. Nor was it to be supposed that in case the French Government should be willing to part with more than the terri-

* American State Papers.


Old Maps Showing the Extent of Louisiana
STATE
NEW
MEXICO
102°30'
97°30'
35°
LOUISIANA.
BISCAY
NEW LEON
Gulf of Mexico
No. VIII.
No. 7. 1775
London. Under act of Parliament
Copied from Von Stacklin's.
St. Petersburg. 1774.
Am. Atlas Jeffery's No. 2.
CHIKASAWS
CHACTAWS
Pacific
Additions to the United States by the treaty and its effects.
110°
140°
LOUISIANA
40°
Barbé-Marbois.
Paris 1820.
He negotiated
treaty of cession in 1803.
His History of Louisiana
Cong. Library.
Red
Ark
30°
No. IX.
Gulf of Mexico

tory on our side of the Mississippi, an arrangement with Spain for restoring to her the territory on the other side, would not be preferred to a sale of it to the United States. The effect of such considerations was diminished by no information or just presumptions whatever. . . . In truth the communications in general between Mr. Livingston and the French Government, both of prior and subsequent date, manifested a repugnance to our views of purchase, which left no expectation of any arrangement with France, by which an extensive acquisition was to be made, unless in a favorable crisis, of which advantage should be taken. Such was thought to be the crisis which gave birth to the extraordinary commission in which you are joined. It consisted of the state of things produced by the breach of our deposits at New Orleans; the situation of the French islands, particularly the important island of St. Domingo; the distress of the French finances; the unsettled posture of Europe; the increasing jealousy between Great Britain and France; and the known aversion of the former to see the mouth of the Mississippi in the hands of the latter. These considerations, it was hoped, might so far open the eyes of France to her real interest, and her ears to the monitory truths which were conveyed to her through different channels, as to reconcile her to the establishment of the Mississippi as a natural boundary to the United States; or at least to some concession which would justify our patiently waiting for a fuller accomplishment of our wishes under auspicious events. The crisis relied on has derived peculiar force from the rapidity with which the complaints and questions between France and Great Britain ripened toward a rupture; and it is just glad and for mutual and general felicitation that it has issued under your zealous exertions in the extensive acquisition beyond the Mississippi."

The following interesting letter was written by President Jefferson to John C. Breckenridge under date of August 12, 1803:* "The boundaries, which I deem not admitting question, are the highlands on the western side of the Mississippi enclosing all its waters, the Missouri of course, and terminating in the line drawn from the northwestern point of the Lake of the Woods to the nearest source of the Mississippi as lately settled between Great Britain and the United States. We have some claims to extend on the seacoast westwardly to the Rio Norte or Bravo, and better to go eastwardly to the Rio Perdido between Mobile and Pensa-

* Writings of Thomas Jefferson: Ford.

cola, the ancient boundary of Louisiana. These claims will be a subject of negotiation with Spain and if, as soon as she is at war, we push them strongly with one hand, holding out a price in the other, we shall certainly obtain the Floridas and all in good time. In the meanwhile, without waiting for permission, we shall enter into the exercise of the natural right we have always insisted on with Spain, to-wit: That of a nation holding the upper part of streams having a right of innocent passage through them to the ocean. We shall prepare her to see us practice and she will not oppose it by force. Objections are raised to the eastward (in the New England States probably) against the vast extent of our boundaries, and propositions are made to exchange Louisiana or a part of it for the Floridas. But as I have said we shall get the Floridas without, and I would not give one inch of the waters of the Mississippi to any nation, because I see in a light very important to our peace the exclusive right to its navigation and the admission of no nation into it, but as into the Potomac or Delaware with our consent and under our police. These Federalists see in this acquisition the formation of a new confederacy, embracing all the waters of the Mississippi on both sides of it, and a separation of its eastern waters from us. These combinations depend on so many circumstances which we cannot forsee, that I place little reliance on them. We have seldom seen neighborhood produce affection among nations. The reverse is almost the universal truth. Besides, if it should became the great interest of those nations to separate from this, if their happiness should depend on it so strongly as to induce them to go through that convulsion, why should the Atlantic States dread it? But especially why should we, their present inhabitants, take side in such a question? When I view the Atlantic States, procuring for those on the eastern waters of the Mississippi friendly instead of hostile neighbors on its western waters, I do not view it as an Englishman would the procuring future blessings for the French nation with whom he has no relations of blood or affection. The future inhabitants of the Atlantic and Mississippi States will be our sons. We leave them in distinct but bordering establishments. We think we see their happiness in their union and we wish it. Events may prove it otherwise; and if they see their interest in separation, why should we take side without Atlantic rather than our Mississippi descendants? It is the elder and the younger son differing. God bless them both and keep them in union, if it be for their good, but separate them if it be better." It was at this time that Mr. Jefferson and other American states-

men prepared drafts of an amendment to the constitution providing for the admission of new states into the Union.

As soon as it became known to Spain that Napoleon had ceded Louisiana to the United States, the French authorities encountered serious remonstrances from the Spanish government. They declared that the cession was a breach of faith; that France had solemnly agreed not to alienate the province (which was true); and that they (Spain) would use every endeavor in their power to obstruct the transfer. The Spanish minister at Paris was instructed to prevent, if possible, the cession from being carried into execution and was authorized to us "pecuniary arguments" if they were likely to succeed.* The following communication was sent to the American minister to Spain by the Spanish government:

"Palace, July 19, 1803.

"To the Minister of the United States of America:

"Sir: His Majesty the King having given orders to his minister near the United States of America to make known to that government the absolute nullity of the proceedings of France in disposing of Louisiana, which she had formally and positively engaged not to sell, I now communicate the same to you, in order that you may submit it to your government, which will thus receive it by distinct channels. At the same time, I must inform you, in reply to the assurance given me by you at our last conference that France had also ceded West Florida, that the said province never has at any time or by any title belonged to the French."

"I am &c PEDRO CERVALLOS."*

The opposition of Spain to the cession of Louisiana to the United States was communicated to the latter from Madrid by Charles Pinckney on August 2, 1803, in the following words: "He (Cervallos) then went on to converse with me on the subject of the cession of Louisiana by the French to us, in which he expressed an opinion so important and extraordinary that I made a point of transmitting it to you by the post the next day by the rout of Lisbon, and which I trust you will soon receive.† The substance was this: That in the cession of Louisiana by Spain to France, there was a secret article that France should never part with Louisiana except to Spain; that if she (France) should

* History of France; Wright.

† American State Papers.

ever wish to dispose of it, Spain should always have the right of pre-emption; from which he argued that France had not the right to make such cession without the consent of Spain, and that he was astonished our commissioners had not applied to their Government to know the actual terms upon which France was to receive Louisiana, and in fact to examine their title. I answered him by saying that he could not be more astonished at their not doing so than I was at his remark; that he well knew Mr. Livingston and myself had been applying for upwards of a year incessantly to the Governments of France and Spain to know if Louisiana was ceded and upon what terms; that for more than a year the most guarded silence was observed by both and that at last when Spain had answered and avowed the cession, not a word was mentioned in his (Mr. Cervallos's) letter to me of any secret article; that the letter only avowed the cession and that it had been made subject to the conditions of our treaty; that I had transmitted this to Mr. Livingston and Mr. Monroe; and I asked whether after the sight of this letter from him, acknowledging the cession, they could for a moment doubt the perfect right of France to sell. I then further asked him whether if Spain still continued in possession and our Government ratified the treaty there would be any hesitation on the part of His Majesty to give us the possession: to which he made no positive reply, nor could I bring him to do so during the whole evening. I could easily discover in the course of it that there exists at present much uneasiness on the part of this court with respect to the conduct of France in the sale of Louisiana, and particularly in the opinion held by our commissioners that it includes West Florida, which both Mr. Cervallos and the Prince of Peace (Godoy) expressly deny."

The action of the Spanish minister at Washington was equally emphatic and decisive. Mr. Madison wrote to Mr. Livingston on October 6, "Mr. Pinckney (the American minister to Spain) will doubtless have communicated to you his conversation with Mr. Cervallos (the Spanish prime minister), in which the latter denied the right of France to alienate Louisiana to the United States, alleging a secret stipulation by France not to alienate.* Two notes on the same subject have lately been presented here by the Marquis de Yrujo. In the first dated September 4, he enters a caveat against the right of France to alienate Louisiana, founding it on a declaration of the French ambassador at Madrid in July, 1802, that France would never part with that territory; and

* France seems to have deliberately violated this stipulation.

affirming that on no other condition Spain would have ceded it to France. In the second note dated September 27, it is urged as an additional objection to the treaty between the United States and France, that the French Government had never completed the title of France, having failed to procure the stipulated recognition of the King of Etruria from Russia and Great Britain, which was a condition on which Spain agreed to cede the country to France." Mr. Madison presented conclusive arguments against the tenability of the Spanish opposition. Among other things he cited the reply of the Spanish prime minister to Mr. Pinckney at Madrid early in May that, "the entire province of Louisiana, with the limits it had when held by France, was retroceded to that Power, and that the United States might address themselves to the French Government in order to negotiate the acquisition of the territories which would suit their interest." He stated that the United States should proceed to carry out the provisions of the treaty. He further said, "The United States have obtained by just and honorable means a clear title to a territory too valuable in itself and too important to their tranquillity and security not to be effectually maintained. And they count on every positive concurrence on the part of the French Government which the occasion may demand from their friendship and their good faith."

The Spanish opposition to the treaty was grounded on the following principal reasons: 1. That the French government had contracted with the king of Spain the most solemn engagament never to alienate the province; 2. That the conditions under which France secured Louisiana by the treaty of San Ildefonso had not been fulfilled, and therefore France could not convey a good and sufficient title. These objections were presented and argued by El Marquis de Casa Yrujo, the Spanish ambassador at Washington, in communications to the secretary of state. The latter sent copies of the letters to the French ambassador at Washington, and requested to hear from him on the subject. On the first point above he replied that "the treaty of St. Ildefonso retrocedes Louisiana in full sovereignty and without any limitation as to the future domain of France. To operate a limitation so essential as is that to which the Court of Madrid appeals, nothing less would have been necessary, according to the nature of contracts in general and of treaties in particular, than a stipulation to this effect inserted in the treaty itself.* A promise made fifteen months after

* Observe that the French ambassador did not deny the claim that his government had promised not to alienate Louisiana.

the signature of this pact, and which might on one side have been yielded to the solicitations of one of the contracting parties, and on the other dictated by dispositions which might then exist in the other party, but which ulterior circumstances might have changed; such a promise cannot create in favor of Spain a right sufficient to enable her to charge with invalidity the transactions which have contravened it. The contrary pretension would certainly confound all the principles relative to the nature of obligations and would destroy the solemnity of treaties. These general reasonings would receive a new force from the circumstances which are peculiar to different nations in relation to the subject of pacts; but the undersigned will not enter into the examination of these circumstances, under the persuasion that general principles sufficiently repel the pretensions of the Court of Madrid. On the second point the objections of that court do not appear to the undersigned to be better founded. It is known that the King of Etruria was placed on the throne since the treaty of St. Ildefonso. We have a right to suppose that his Catholic Majesty was satisfied from that period with the measures and efforts employed by France to cause the title of this prince to be acknowledged by the other nations. It is at least what might be concluded from facts within the knowledge of all the world. In the treaty of Amiens, concluded on the 27th of March, 1802, Great Britain did not acknowledge the King of Etruria. Notwithstanding the silence of the court of London, on so solemn an occasion, that of Madrid ordered in the month of October following the delivery of the colony to France, as is proved by the royal cedula (a writing), which the undersigned has received and exhibited to Mr. Madison; a cedula which as all the world knows was long ago forwarded to the Captain General of Louisiana, who sent the Marquis de Casa Calvo to New Orleans to superintend its execution. To these conclusive observations the undersigned will add that the court of Madrid might have been informed in the course of the month of February last by its minister to the United States, that the American Government was sending to Paris a minister extraordinary in order to negotiate with the French Government the acquisition of New Orleans. If the court of Madrid had seen in the object of this mission an injury offered to its rights, what prevented it, after being thus early apprised, from informing thereof the minister of the United States at Paris and the French Government, and from interposing before the conclusion of the treaty its intervention in a form adapted to suspend it? It does not appear that that court has taken at Paris any steps of this

nature."* This was also in substance the reply of the secretary of state to the communications of the Spanish ambassador.

The necessary laws for taking possession were no sooner passed by congress in October, than steps were taken to put them into execution. A joint and several commission was forwarded to Gov. W. C. C. Claiborne and Gen. James Wilkinson authorizing them to receive possession of the province and to occupy it. A separate commission was sent to Governor Claiborne as temporary governor. The contingency of forcible opposition from Spain was taken into consideration, and a considerable force was sent with the commissioners and another assembled at Natchez in readiness for any emergency—five hundred mounted militia from Tennessee being ordered to the latter place. They took with them "such regular troops as had been assembled at Fort Adams from the nearest posts and some militia of the Mississippi Territory." To be in readiness for any emergency that might arise "a respectable body of militia was ordered to be in readiness in the States of Ohio, Kentucky and Tennessee. No occasion however arose for their services. The French officials in all respects supplemented and supported the proceedings of the United States. There was no indication whatever that Spain intended to use force to prevent the transfer of the province to the United States.*

The messenger, M. Landais, sent from Washington to New Orleans with the commission to M. Laussat to receive the province from Spain and then turn it over to the United States, arrived November 23, 1803. The messenger traversed the Indian country, going by land instead of by water, to gain time. On the 30th of November, M. Laussat, in his character of French commissioner, issued a proclamation, announcing to the inhabitants the cession of the province to the United States. To be sure of no mistake, all of the formalities were observed. On the same day all the Spanish troops and militia were drawn up in front of the city hall, and the inhabitants assembled to witness the proceedings, so important to them. In the council chamber three chairs were provided, Governor Salcedo occupying the middle one. Laussat handed him a copy of the royal decree of October 15, 1802, by which the king of Spain ordered his representative in Louisiana to deliver the colony to the French commissioner. At the same time Laussat produced his own authority to take possession of Louisiana on behalf of France. When all were read and pronounced satisfactory, Governor Salcedo left his chair and

* American State Papers.

delivered the keys of the city to Laussat. The Marquis Casa Calvo announced that all Lousianians who did not wish to leave Louisiana were from that moment absolved from future allegiance to Spain. At a signal the cannon outside were fired, the Spanish colors lowered, and the tri-color of France, after the lapse of nearly a century and a quarter from the discovery by La Salle, again announced the ascendency of the latter at the mouth of the Mississippi. France was again in possession.*

Twenty days later, or on December 20, 1803, the same proceedings were enacted between the French and the Americans. General Wilkinson in command of the American troops established his camp on the left bank of the river about half a league from New Orleans on the 17th and 18th of the month. On the 20th, by permission of Laussat, he entered New Orleans with his forces to take part in the proceedings. The French officers, troops and all the inhabitants as before assembled at the city hall. The American commissioners, Claiborne and Wilkinson, were there received by Laussat and the other French officials. The treaty of cession was formally read, as were also the various powers of the commissioners. Laussat said, "In conformity with the treaty, I put the United States in possession of Louisiana and its dependencies. The citizens and inhabitants who wish to remain here and obey the laws are from this moment exonerated from the oath of fidelity to the French Republic." The French flag was then lowered, and the stars and stripes raised over the heads of the multitude, amid the roar of the guns.* The fate of Louisiana was finally settled; but who is there to measure the joys and griefs in the hearts of the people who had borne so much.

While the proceedings at New Orleans were designed to transfer the whole province to the United States, it was deemed best to observe the formalities of transfer in Upper Louisiana as well as in that city. Accordingly, the necessary powers were transmitted to Major Amos Stoddard by the French minister at Washington to receive on behalf of France Upper Louisiana from the representative of Spain, which transfer was formally made on the 9th of March, 1804. The following day, March 10, he observed the formality of turning it over to a representative of the United States.†

Mr. Martin, the historian of Louisiana, said that on the 18th of May, 1803, Governor Salcedo and Marquis Casa Calvo issued

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* History of Louisiana: Martin.

Sketches Historical and Descriptive of Louisiana: Stoddard.

a proclamation to the effect "that the cession of the colony and island of New Orleans should be on the same terms as that of His Most Christian to His Catholic Majesty; and consequently the limits on both sides of the river St. Louis or Mississippi should continue as they remained by the fifth article of the definitive treaty of peace concluded at Paris on the 10th of December, 1763: and accordingly the settlements from the bayou Manshac as far as the line which separated the dominions of Spain and those of the United States should remain a part of the monarchy of Spain and be annexed to the province of West Florida."

The opinion of Mr. Livingston as to the causes which induced or determined the first consul to sell Louisiana to the United States, if no doubt existed of its being unbiased, should be worth more than that of any other American, owing to his unusual powers of pentration, to his intimacy with the French leaders and to his knowledge of French public affairs of that time. His opinion was expressed in his letter of November 15, 1803, to Mr. Madison, as follows: "The war (the one about to break forth between France and England) doubtless had its effect upon the First Consul; but it is equally true that every person he consulted had long before been convinced, and even the Consul's opinion shaken and I will venture to say by my means, of the little advantage France would derive from the possession of that country; and he had even, as I have before informed you, through Joseph Bonaparte, given me assurances that such arrangements should be made as we should approve. The not selling was a personal point of honor, particularly as he was bound by the express stipulation of his treaty with Spain not to do so. Nor until he found himself hampered by another personal consideration, to-wit: His promise to pay the American claims which I had purposely published, could he bring himself to take the step which the prospect of war and the spirited measures of our Government, among which I number the special mission of Mr. Monroe, gave him the strongest apology for doing; particularly as in case of war he had no other means of keeping his word with us. . . . On looking over the original instructions, of which Mr. Monroe was the bearer, I find that we were authorized to give fifty millions for New Orleans and the Floridas; so that we could without too an extraordinary assumption of powers, have gone to the price they expected for Louisiana."*

As soon as the transfer to the United States was formally

* American State Papers.

accomplished, Governor Claiborne issued a proclamation recounting the circumstances of the transfer and declaring "that the government heretofore exercised over the said province of Louisiana, as well under the authority of Spain as of the French Republic, has ceased and that of the United States of America is established over the same; that the inhabitants thereof will be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; that in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess; that all laws and municipal regulations which were in existence at the cessation of the late Government remain in full force; and that all civil officers charged with their execution, except those whose powers have been especially vested in me, and except also such officers as have been entrusted with the collection of the revenue, are continued in their functions during the pleasure of the Governor for the time being, or until provision shall otherwise be made. And I do hereby exhort and enjoin all the inhabitants and other persons within the said province to be faithful and true in their allegiance to the United States and obedient to the laws and authorities of the same, under full assurance that their just rights will be under the guardianship of the United States and will be maintained from all force or violence from without or within." (December 20, 1803.)*

The Spanish government receded from its opposition to the transfer of Louisiana to the United States on the 10th of February, 1804, the Spanish Minister of State, Don Pedro Cervallos, writing as follows to Charles Pinckney, American envoy to Spain: "At the same time that the minister of His Majesty in the United States is charged to inform the American Government respecting the falsity of the rumor referred to, he has likewise orders to declare to it that His Majesty has thought fit to renounce his opposition to the alienation of Louisiana made by France, notwithstanding the solid reasons on which it is founded, thereby giving a new proof of his benevolence and friendship towards the United States." The Spanish minister at Philadelphia communicated the same information to Mr. Madison, secretary of state.

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* American State Papers.

"Philadelphia, May 15, 1804.

"Sir:

"The explanations which the Government of France has given to his Catholic Majesty concerning the sale of Louisiana to the United States and the amicable dispositions on the part of the King my master towards these States, have determined him to abandon the opposition which at a prior period and with the most substantial motives he had manifested against the transaction. In consequence, and by special order of his Majesty, I have the pleasure to communicate to you his royal intentions on an affair so important; well persuaded that the American Government will see in this conduct of the King my master a new proof of his consideration for the United States and that they will correspond with a true reciprocity with the sincere friendship of the King of which he has given so many proofs."

"God preserve you many years

"THE MARQUIS OF CASA YRUJO."*

An agreement as to the terms of the sale of Louisiana to the United States had no sooner been reached by the envoys of the two republics than steps were taken to draw up the necessary papers to that effect. Probably the most interesting of all these documents is the first draft drawn by Napoleon of the treaty manuscript, never published in the United States until a few years ago, and obtained from the archives at Paris. The following is the full text of the original draft thus drawn by Napoleon:*

"Paris, 3 Floreal, an 11 (April 23d, 1803).

"The First Consul of the French Republic, in the name of the French people, and the President of the United States of America, desiring to prevent all possible misunderstanding relating to the topics mentioned in Articles II and V of the Agreement of the 8th Vendemiaire, year 9 (October 1st, 1802), and wishing to promote as far as possible the close and friendly relations which at the time of the said Agreement were fortunately established between the two states, have named as Ministers Plenipotentiary Citizen Barbé Marbois, Minister of the Public Treasury (the American names are omitted), who, after having exchanged their credentials, have agreed on the following articles:

"Art. I. The French Republic yields and transmits to the United States of America all the right which it has acquired over

* American State Papers.

* Correspondance de Napoléon Premier, publiée par ordre de L'Empereur Napoléon III. (In the Library of the University of Wisconsin.)

Louisiana through the treaty made with His Catholic Majesty, the King of Spain, the 8th Vendemiaire, year 9 of the French Republic; and in consequence of said cession, Louisiana, its territory, and the dependencies appertaining thereto, shall become part of the American Union, and shall constitute in due course one or several States according to the terms of the Constitution of the United States.

"Art. II. The United States undertake to favor in a special way the commerce and navigation of French citizens and of the subjects of His Catholic Majesty, in the towns, harbors, roads, seas, rivers, etc., of Louisiana, and to especially secure to them by a privilege not in future to be granted to any other nation, the perpetual right of deposit and navigation which was conceded to the Americans by the Treaty of October 27th, 1795, between Spain and the United States.

"Moreover, it is agreed that in the ports and towns of Louisiana, French and Spanish commerce shall enjoy perfect freedom to import goods. French and Spanish vessels and merchandise shall never be subjected to any of the customs or dues which may be imposed upon the commerce of other nations. They shall, in the ports of Louisiana, be treated in all respects like French-American merchandise coming from some other American port.

"Art. III. Three other places of commercial deposit shall be accorded to France and Spain, on the right bank of the Mississippi, toward the mouth of the Red River and the mouths of the Arkansas and Missouri, and two points on the left bank of the Illinois River and toward the mouth of the Ohio. French merchants shall enjoy in these places all the advantages accorded to Americans by the King of Spain, on the 27th of October, 1795. It is also agreed that France may appoint in these places, as well as at New Orleans, commercial agents, who, according to Article X of the Agreement of the 8th Vendemiaire, year 9, shall enjoy the usual rights and prerogatives of such officials.

"Art. IV. It is agreed that the obligations assumed by the Government of the French Republic as respects the debt due to American citizens, specified in Article V of the Agreement of the 8th Vendemiaire, shall be held to be cancelled, and that the obligation shall be regarded as transferred by the present treaty, to the Government of the United States, which undertakes to satisfy every claim which has been or may be addressed on that score to the Government of the Republic; it being well understood that the obligations contracted toward French citizens by the Government of the United States, by virtue of the said article, remain

untouched, as well as the rights of French citizens to the payment of debts due them.

"Art. V. Aside from the satisfaction of the claims specified in the preceding article, the Government of the United States agrees to pay to France the sum of one hundred million francs, in twelve equal installments, the term for each installment to be twelve months, and the payment of the first installment to be made a month after the present date.

"The present convention shall be ratified in good and due form, and the ratifications shall be exchanged within six months of the date of the signatures of the Ministers Plenipotentiary, or sooner if it is possible."

"Archives de Finance." "BY ORDER OF THE FIRST CONSUL."

"TREATY FOR THE CESSION OF LOUISIANA TO THE UNITED STATES; "CONCLUDED APRIL 30, 1803; RATIFICATIONS EXCHANGED AT WASHINGTON OCTOBER 21, 1803; PROCLAIMED OCTOBER 21, 1803.

"The President of the United States of America, and the First Consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding relative to objects of discussion mentioned in the second and fifth articles of the convention of the 8th Vendemiaire, an 9 (30th September, 1800) relative to the rights claimed by the United States, in virtue of the treaty concluded at Madrid, the 27th of October, 1795, between his Catholic Majesty and the said United States, and willing to strengthen the union and friendship which at the time of the said convention was happily re-established between the two nations, have respectively named their Plenipotentiaries, towit: the President of the United States, by and with the advice and consent of the Senate of the said States, Robert R. Livingston, Minister Plenipotentiary of the United States, and James Monroe, Minister Plenipotentiary and Envoy Extraordinary of the said States, near the Government of the French Republic; and the First Consul, in the name of the French people, Citizen Francis Barbé Marbois, Minister of the Public Treasury; who, after having respectively exchanged their full powers, have agreed to the following articles:

"Article I. Whereas by the article the third of the treaty concluded at St. Ildefonso, the 9th Vandemiaire, an 9 (1st October, 1800) between the First Consul of the French Republic and His Catholic Majesty, it was agreed as follows: 'His Catholic

Majesty promises and engages on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States.' And whereas, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestible title to the domain and to the possession of the said territory; the First Consul of the French Republic desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty, concluded with His Catholic Majesty.

"Article II. In the cession made by the preceding article are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks and other edifices which are not private property. The archives, papers and documents, relative to the domain and sovereignty of Louisiana and its dependencies, will be left in the possession of the commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers of such of the said papers and documents as may be necessary to them.

"Article III. The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess.

"Article IV. There shall be sent by the Government of France a Commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of His Catholic Majesty the said country and its dependencies, in the name of the French Republic, if it has not been already done, as to transmit it in the name of the French Republic to the Commissary or Agent of the United States.

"Article V. Immediately after the ratification of the present

treaty by the President of the United States, and in case that of the First Consul shall have been previously obtained, the Commissary of the French Republic shall remit all military posts of New Orleans, and other parts of the ceded territory, to the Commissary or Commissaries named by the President to take possession; the troops, whether of France or Spain, who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible, in the course of three months, after the ratification of this treaty.

"Article VI. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

"Article VII. As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on; it has been agreed between the contracting parties that the French ships coming directly from France or any of her colonies, loaded only with the produce and manufactures of France or her said colonies; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the port of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage than that paid by the citizens of the United States.

During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory; the twelve years shall commence three months after it shall have been notified at Paris to the French Government, if it shall take place in the United States; it is, however, well understood that the object of the above article is to favor the manufactures, commerce, freight and navigation of France and of Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the

United States, or any right they may have to make such regulations.

"Article VIII. In future and forever after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favoured nations in the ports above mentioned.

"Article IX. The particular convention signed this day by the respective ministers, having for its object to provide for the payment of debts due to the citizens of the United States by the French Republic prior to the 30th Septr. 1800, (8th Vendemiaire, an 9) is approved, and to have its execution in the same manner as if it had been inserted in this present treaty; and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other.

Another particular convention signed at the same date as the present treaty relative to a definitive rule between the contracting parties is in the like manner approved, and will be ratified in the same form, and in the same time, and jointly.

"Article X. The present treaty shall be ratified in good and due form and the ratifications shall be exchanged in the space of six months after the date of the signature of the Ministers Plenipotentiary, or sooner if possible.

"In faith whereof, the respective Plenipotentiaries have signed these articles in the French and English languages; declaring nevertheless that the present treaty was originally agreed to in the French language; and have hereunto affixed their seals.

"Done at Paris, the tenth day of Floreal, in the eleventh year of the French Republic, and the 30th of April, 1803.

"(SEAL)	"ROBT. R. LIVINGSTON.
(SEAL)	"JAS. MONROE.
(SEAL)"	"BARBE MARBOIS."

"CONVENTION FOR PAYMENT OF SIXTY MILLION OF FRANCS BY THE UNITED STATES; CONCLUDED APRIL 30, 1803; RATIFICATIONS EXCHANGED AT WASHINGTON OCTOBER 21, 1803; PROCLAIMED OCTOBER 21, 1803.

"The President of the United States of America and the First Consul of the French Republic, in the name of the French people, in consequence of the treaty of cession of Louisiana, which has been signed this day, wishing to regulate definitively everything which has relation to the said cession, have authorized to this effect the Plenipotentiaries, that is to say: The President of the

United States has, by and with the advice and consent of the Senate of the said States, nominated for their Plenipotentiaries, Robert R. Livingston, Minister Plenipotentiary of the United States, and James Monroe, Minister Plenipotentiary and Envoy Extraordinary of the said United States, near the Government of the French Republic; and the First Consul of the French Republic, in the name of the French people, has named as Plenipotentiary of the said Republic, the citizen Francis Barbé Marbois; who, in virtue of their full powers, which have been exchanged this day, have agreed to the following articles:

"Article I. The Government of the United States engages to pay to the French Government in the manner specified in the following article, the sum of sixty millions of francs, independent of the sum which shall be fixed by another convention for the payment of the debts due by France to citizens of the United States.

"Article II. For the payment of the sum of sixty millions of francs, mentioned in the preceding article, the United States shall create a stock of eleven millions two hundred and fifty thousand dollars, bearing an interest of six per cent. per annum, payable half yearly in London, Amsterdam, or Paris, amounting by the half year, to three hundred and thirty-seven thousand five hundred dollars, according to the proportions which shall be determined by the French Government to be paid at either place; the principal of the said stock to be re-imbursed at the Treasury of the United States, in annual payments of not less than three millions of dollars each, of which the first payment shall commence fifteen years after the date of the exchange of ratifications: this stock shall be transferred to the Government of France, or to such person or persons as shall be authorized to receive it, in three months at most after the exchange of the ratifications of this treaty, and after Louisiana shall be taken possession of in the name of the Government of the United States.

"It is further agreed, that if the French Government should be desirous of disposing of the said stock to receive the capital in Europe, at shorter terms, that its measures for that purpose shall be taken so as to favor, in the greatest degree possible, the credit of the United States, and to raise to the highest price the said stock.

"Article III. It is agreed that the dollars of the United States, specified in the present convention, shall be fixed at five francs, $\frac{3333}{1000}$ or five livres eight soux tournois.

"The present convention shall be ratified in good and due form, and the ratification shall be exchanged in the space of six months to date from this day, or sooner if possible.

"In faith of which, the respective Plenipotentiaries have signed the above articles, both in the French and English languages, declaring, nevertheless, that the present treaty has been originally agreed on and written in the French language; to which they have hereunto affixed their seals.

"Done at Paris the tenth of Floreal, eleventh year of the French Republic, (30th April, 1803.)

"(SEAL)	"ROBT. R. LIVINGSTON.
(SEAL)	"JAS. MONROE.
(SEAL)"	"BARBE MARBOIS."

CHAPTER VI

The Constitutionality of the Cession

THE unexpected acquisition of Louisiana occasioned unbounded satisfaction in every section of the United States, except certain portions of New England, which had never looked with favor upon the Western country. Many there had rigidly maintained that the original limits of the thirteen colonies should not be enlarged, and that expansion westward meant future dissatisfaction, disunion and war. In proof of this opinion, the previous proceedings of the western people, either to separate themselves from the Atlantic states, or to secure the uninterrupted right to navigate the Mississippi, were cited with triumphant formality to clinch the argument. Others declared that the Alleghanies were the natural barrier between the East and the West, and that the geographical situation of the Western country rendered the conclusion foregone that so vast an extent of territory, with so many different interests, could not be maintained under one sovereignty. But a large majority of the people, both East and West, fully realized and proclaimed the value of the acquisition. The administration of Mr. Jefferson was at once confronted with the serious problem of complying with the terms of the cession, which embraced the future formation of states from the ceded territory and their final admission into the Union. Immediately, the question of the constitutionality of the steps necessary to be taken absorbed the attention of the president and congress. It became at once apparent that the wide diversity of opinion on that important subject might not only make it necessary to amend the constitution to meet the new conditions, but might even prevent the ratification of the treaty of cession. This difference of opinion was most pronounced in the two houses of

congress; and the outcome was regarded with earnest concern by all who favored the acquisition of the province upon almost any terms that could be construed as constitutional, even though the adoption of an amendment to that instrument should become necessary. However, as time passed, this difference in views was shown to be more the result of partisanship than a belief that the treaty should not be ratified, or that the constitution prohibited the admission of new states into the Union. While, therefore, the debates of congress reveal pronounced views expressed in vigorous language, the charges, counter-charges and arguments also show that the opposition was directed more to the method of precedure than to an attack upon the question itself.

As early as January, 1803, President Jefferson wrote to Mr. Gallatin,* "You are right in my opinion as to Mr. L.'s proposition; there is no Constitutional difficulty as to the acquisition of territory, and whether, when acquired, it may be taken into the Union by the Constitution as it now stands, will become a question of expediency. I think it will be safer not to permit the enlargement of the Union but by amendment of the Constitution." These remarks were made in regard to the admission into the Union of the Floridas or other territory which the government then desired to secure.

In a communication dated August 25, 1803, President Jefferson wrote to the secretary of state as follows: "I suppose Monroe will touch on the limits of Louisiana only incidentally, inasmuch as its extension to Perdido curtails Florida and renders it of less worth. I have used my spare moments to investigate by the help of my books here the subject of the limits of Louisiana. I am satisfied our right to the Perdido is substantial and can be opposed by a quibble on form only; and our right westwardly to the bay of St. Bernard may be strongly maintained. . . . Further reflection on the amendment to the Constitution necessary in the case of Louisiana satisfies me it will be better to give general powers with specified exceptions somewhat in the way stated below;" and on September 7, 1803, he wrote to W. C. Nicholas that he was "aware of the force of the observation you make on the power given by the Constitution to Congress, to admit new States into the Union, without restraining the subject to the territory then constituting the United States. But when I consider that the limits of the United States are precisely fixed by the treaty of 1783, that the Constitution expressly declares itself to be

* Writings of Thomas Jefferson. Ford.

made for the United States, I cannot help believing the intention was to permit Congress to admit into the Union new States, which should be formed out of the territory for which and under whose authority alone, they were then acting. I do not believe it was meant that they might receive England, Ireland, Holland, &c., into it. . . . Our peculiar security is in possession of a written constitution. Let us not make it blank paper by construction. I say the same as to the opinion of those who consider the grant of the treaty making power boundless. If it is then we have no Constitution. . . . Nothing is more likely than that their (the governmental functions named in the Constitution) enumeration of powers is defective. This is the ordinary case of all human works. Let us go on then perfecting it by adding by way of amendment to the Constitution, those powers which time and trial show are still wanting. . . . I confess I think it proper in the present case to set an example against broad construction, by appealing for new power to the people. If however our friends shall think differently, certainly I shall acquiesce with satisfaction."*

On the 16th of July, 1803, President Jefferson issued a proclamation for the convocation of congress on October 17, called together earlier than the regular opening, for the special purpose of considering, among other things, the cession of Louisiana by France to the United States. In his message to that body on the latter date, he reviewed the Louisiana question, describing the interdiction of the deposits, its effects upon the United States, the action taken by the administration for relief, the consequent revocation of the interdiction, the steps that had been taken to secure and perpetuate American rights on the Mississippi, and the transfer of the whole of Louisiana to the United States. He said. "With the wisdom of Congress it will rest to take those ulterior measures which may be necessary for the immediate occupation and temporary government of the country; for its incorporation into our Union; for rendering the change of government a blessing to our newly adopted brethren; for securing to them the rights of conscience and of property; for confirming to the Indian inhabitants their occupancy and self-government, establishing friendly and commercial relations with them; and for ascertaining the geography of the country acquired." He further said, "Propositions had therefore been authorized (by Congress) for obtaining, on fair conditions, the sovereignty of New Orleans and

* Writings of Thomas Jefferson: Ford.

of other possessions in that quarter interesting to our quiet, to such extent as was deemed practicable; and the provisional appropriation of two millions of dollars, to be applied and accounted for by the President of the United States, intended as part of the price, was considered as conveying the sanction of Congress to the acquisition proposed." He continued, "The sum of fifty thousand dollars appropriated by Congress for providing gunboats remains unexpended. The favorable and peaceable turn of affairs on the Mississippi rendered an immediate execution of that law unnecessary. The same issue of events dispensed with a resort to the appropriation of a million and a half of dollars, contemplated for purposes which were effected by happier means."†

In another message four days later Mr. Jefferson said, "In my communication to you of the 17th instant, I informed you that conventions had been entered into with the government of France for the cession of Lousiana to the United States. These, with the advice and consent of the Senate, having now been ratified, and my ratification exchanged for that of the First Consul of France in due form, they are communicated to you for consideration in your legislative capacity. You will observe that some important conditions cannot be carried into execution but with the aid of the legislature, and that time presses a decision on them without delay. The ulterior provisions also, suggested in the same communication, for the occupation and government of the country, will call for early attention. Such information relative to its government as time and distance have permitted me to obtain, will be ready to be laid before you in a few days. But as permanent arrangements for this object may require time and deliberation, it is for your consideration whether you will not forthwith make such temporary provisions for the preservation, in the meanwhile, of order and tranquillity in the country as the case may require."*

Both branches of congress immediately proceeded to act upon the advice and recommendations of the president. Bills were introduced authorizing the executive to take possession of Louisiana and to provide for the temporary government thereof; for the creation of stock certificates to the amount of eleven million two hundred and fifty thousand dollars to be employed in the payment for that province, specifying how payments should be made; and for providing means to pay the claims of American citizens against France, which had been assumed by the United States as one of the conditions of cession.* In the senate, on Friday,

† Messages and Papers of the Presidents.

* Annals of Congress.

October 21, Mr. Breckenridge gave notice that, on tomorrow, he should ask leave to bring in a bill to enable the president to take possession of Louisiana and for other purposes, and the next day accordingly introduced such a bill, which was read. It became the basis of the act subsequently passed, the house making a few light amendments thereto. On October 24, the bill "was read a second time and referred to Messrs. Breckenridge, Dayton and Baldwin to consider and report thereon." On the 25th the bill was reported without amendments by this committee, and was ordered to pass to a third reading. The next day, the 26th of October, it was read the third time; and upon the question being put, Shall this bill pass? it was determined in the affirmative—yeas 26, nays 6. The six senators who voted in the negative were John Quincy Adams, James Hillhouse, Simeon Olcott, Timothy Pickering, William Plumer and Uriah Tracy, all of New Hampshire, Massachusetts and Connecticut. On the 29th, the bill was returned by the house with amendments, to which the senate disagreed, but later the same day receded from their disagreement and accepted the amendments. Senate amendments to the house amendments were rejected. Thus within the space of eight days the bill was introduced and read in the senate three times on three different days; was considered, amended and passed by the house; was considered again by the senate with the house amendments and saved from further change in the senate; and was then passed by a handsome majority. An analysis of the negative vote and of the speeches later made by the above named senators, reveals the fact that their opposition was mainly influenced by the remoteness of Louisiana, by their disinclination to any change in the constitutional compact of the thirteen states, and by their belief that the methods proposed required the delegation of specific constitutional and exclusive rights of the senate or the house, to the president. The debate in the senate on the Louisiana treaty came up in considering the bill providing for the issuance of stock to pay for the province.

By this act Louisiana was to be paid for in certificates of stock amounting to eleven million two hundred and fifty thousand dollars, bearing six per cent interest, to be paid in installments from a sinking fund created for that purpose. The certificates were to be delivered to a representative of France within three months after the ratification of the treaty and after Louisiana had been formally delivered to the United States. On the same date an act was approved to appropriate three million seven hundred and fifty thousand dollars, thus making a total of fifteen million dol-

lars provided for, to be used in paying the American claims stipulated in the cession treaty. Both of these acts were approved November 10, 1803. In providing for the payment of these amounts, and in paying the same, the United States was prompt and punctilious, because it was desired that no cause whatever on that score should be given to France to evade or renounce the bargain.

During the debate in the senate Mr. White, of Delaware, said,* "It is now a well-known fact that Spain considers herself injured by this treaty, and if it should be in her power to prevent it, will not agree to the cession of New Orleans and Louisiana to the United States. She considers herself absolved from her contract with France, in consequence of the latter having neglected to comply with certain stipulations in the treaty of San Ildefonso, to be performed on her part, and of having violated her engagement never to transfer this country into other hands. . . . I have no hesitation in saying that if, in acquiring this territory under the treaty, we have to fire a single musket, to charge a bayonet, or to lose a drop of blood, it will not be such a cession on the part of France as should justify to the people of this country the payment of any, and much less so enormous a sum of money. What would the case be, sir? It would be buying of France authority to make war upon Spain; it would be giving the First Consul fifteen millions of dollars to stand aloof until we can settle our differences with His Catholic Majesty. . . . I wish not to be understood as predicting that the French will not cede to us the actual and quiet possession of the territory. I hope to God they may, for possession of it we must have—I mean of New Orleans and of such other positions on the Mississippi as may be necessary to secure to us forever the complete and uninterrupted navigation of that river. This I have ever been in favor of; I think it essential to the peace of the United States and to the prosperity of our western country. But as to Louisiana, this new, immense, unbounded world, if it should ever be incorporated into this Union, which I have no idea can be done but by altering the constitution, I believe it will be the greatest curse that could at present befall us; it may be productive of innumerable evils. . . . We have already territory enough, and when I contemplate the evils that may arise to these states from this intended incorporation of Louisiana into the Union, I would rather see it given to France, to Spain, or to any other nation on the earth,

* Annals of Congress.

upon the mere condition that no citizen of the United States should ever settle within its limits, than to see the territory sold for an hundred millions of dollars and we retain the sovereignty. But however dangerous the possession of Louisiana might prove to us, I do not presume to say that the retention of it would not have been very convenient to France, and we know that at the time of the mission of Mr. Monroe, our administration had never thought of the purchase of Louisiana, and that nothing short of the fullest conviction on the part of the First Consul that he was on the very eve of a war with England; that this being the most defenceless point of his possessions, if such they could be called, was the one at which the British would first strike, and that it must inevitably fall into their hands, could ever have induced his pride and ambition to make the sale. He judged wisely that he had better sell it for as much as he could get than lose it entirely. And I do say that under existing circumstances, even supposing that this extent of territory was a desirable acquisition, fifteen millions of dollars was a most enormous sum to give."

Mr. Wells of Delaware said, "The bill on your table gives to the president this power (of paying for Louisiana). I am for our retaining and exercising it ourselves. I may be asked, why not delegate this power to the President? Sir, I answer by inquiring why we should delegate it? To us it properly belongs; and unless some advantage will be derived to the United States, it shall not be transferred with my consent. Congress will be in session at the time that the delivery of the ceded territory takes place; and if we should then be satisfied that the French have executed with fidelity that part of the treaty which is incumbent upon them first to perform, I pledge myself to vote for the payment of the purchase money. . . . I am strongly impressed with an opinion that even if possession is rendered to us, the territory will come into our hands without any title to justify our holding it. Is there not on the face of this instrument itself some mark of suspicion? You find in the treaty not a single word relating to any substantial consideration to be paid by the United States. . . . It is true you perceive in the ninth article of the treaty a general reference to two conventions, signed at the same time with the treaty, with respect to the payment of money by the United States to France, and which we regard as the only consideration for the territory ceded to us. . . . The convention here referred to is said to be 'relative to a definitive rule between the contracting parties.' Why these dark, obscure and unintelligible expressions? Is a consideration a 'definitive rule?'

The first article speaks of the cession as being made 'from a desire to give to the United States a strong proof of the friendship of the First Consul, and when you turn to the convention, which is said to establish the 'definitive rule' you find a provision binding the United States to the payment of money to the French Republic, but not a word is said about its being the consideration of the cession. Suspicion hangs over the whole of this business."

In reply to the remarks of Senators White and Wells, Mr. Jackson, of Georgia, said, "But the honorable gentleman (Mr. Wells) has said that the French have no title, and having no title herself, we can derive none from her. Is not, I ask, the King of Spain's proclamation, declaring the cession of Louisiana to France, and his orders to his governor and officers to deliver it to France a title? Do nations give any other? I believe the honorable gentleman can find no solitary instance of feoffment or conveyance between states. The treaty of San Ildefonso was the groundwork of the cession, and whatever might have been the terms to be performed by France, the King of Spain's proclamation and orders have declared to all the world that they were complied with. The honorable gentleman, however, insists that there is no consideration expressed in the treaty, and therefore it must be void; if he will but look attentively at the ninth article, I am persuaded he will perceive one: the conventions are made part of the treaty; they are declared to have execution in the same manner as if they had been inserted in the treaty; they are to be ratified in the same form and in the same time, so that the one shall not be distinct from the other. What inference can possibly be drawn, but that the payments to be made by them were full consideration for Louisiana. . . . I do not believe that Spain will venture war with the United States. I believe she dare not: if she does she will pay the cost. The Floridas will be immediately ours; they will almost take themselves. The inhabitants pant for the blessings of your equal and wise government; they ardently long to become a part of the United States."

Mr. Pickering, of Massachusetts, said, "I never doubted the right of the United States to acquire new territory, either by purchase or by conquest, and to govern the territory so acquired as a dependent province; and in this way might Louisiana have become a territory of the United States, and have received a form of government infinitely preferable to that to which its inhabitants are now subject. . . . By the treaty of San Ildefonso France acquired a right to demand an actual cession of the territory, provided she fulfilled all the conditions on which Spain promised to

cede. But we know Spain declares that those conditions have not been fully performed; and by her remonstrances warns the United States not to touch Louisiana. Now we, standing (as some gentlemen have expressed themselves) in the shoes of France, can have only the same right relative to the subject in question. We can ask of Spain an actual cession or a confirmation of the claim we have purchased of the French Republic, provided we will and can fulfill the conditions of the treaty of San Ildefonso; and what are these conditions? We cannot tell. I believe our executive knew not what they were; and I believe too that even our envoys who negotiated the treaty for Louisiana were alike uninformed. I believe that they never saw (for they had not intimated that they had ever seen) any other part of the treaty of San Ildefonso than what is recited in the first article of our treaty with France; and this defect has not been supplied by any guaranty of the territory on the part of France. She had not stipulated, nor is under any obligation, to procure the assent of Spain, as a confirmation of the cession to the United States. Such is the nature of our title to Louisiana. . . . Another honorable gentleman has entertained us with an account of the animating address of the French Prefect to the inhabitants of Louisiana, the largest portion of whom are French; and of the cordiality with which they received and echoed in their answer the sentiments of the Prefect. But what were the feelings and conduct of the Spanish officers on seeing these French proceedings? I have heard from an honorable gentleman in my eye (Mr. Dayton of New Jersey), that they sent for the printer and forbade all further promulgation of the address and answer on pain of his being sent to the dungeon or to the mines for life. Thus tenacious was Spain in her right to Louisiana, and thus severe in her prohibition of whatever might disparage her title. . . . It is likewise supposed that the Spanish officers in Louisiana will not dare to refuse obedience to that order (to deliver the province to France); and one gentleman has expressed his opinion, in case such refusal should happen, that the American troops whom the President should send thither would be justified in compelling them to obey. But what if a subsequent royal order had been issued requiring those officers not to deliver up Louisiana to France, or to the United States? We have some reason to think that such is the fact; and resistance I presume was apprehended. Why else all this parade of war? Why had the President been authorized to employ the army and navy of the United States and to call forth any portion of eighty thousand militia? . . . I

believe that this whole transaction has purposely been wrapped in obscurity by the French government. The boundary of Louisiana, for instance, on the side of Florida was, in the treaty, really unintelligible, and yet nothing is easier to define. The French government, however, would find no difficulty in the construction. An honorable gentleman from New Jersey (Mr. Dayton) has informed us that the French Prefect at New Orleans told him that as soon as General Victor should arrive with the French troops he should extend Louisiana far into West Florida."

Mr. Dayton in his speech remarked, "When I said that there existed an essential difference between the French and Spanish officers at New Orleans as to the real boundaries of the province of Louisiana, I did not mean to insinuate that this disagreement extended so far as an opposition to the French taking possession. It was a question of limits only, varying however so much in extent as would have produced a serious altercation between those two countries although closely allied. The Spanish governor had taken it upon himself to proclaim that the province lately ceded and about to be given over to France would be confined on the east of the Mississippi to the river Iberville and the lakes Maurepas and Pontchartrain or in other words to the island of New Orleans; but the French Prefect on the contrary declared that he neither had nor would give his assent to the establishment of those limits, which would be regarded no longer than until the arrival of their troops."*

Mr. Taylor, of Virginia, sustained the bill and discussed two features of the question: 1st, the constitutionality of the United States to acquire territory; and 2d, the treaty stipulation of the admission of a new state into the Union. He said, "Before the confederation, each State in the Union possessed a right, as attached to sovereignty, of acquiring territory, by war, purchase, or treaty. This right must be either still possessed, or forbidden both to each State and to the General Government, or transferred to the General Government. It is not possessed by the States separately, because war and compacts with foreign powers and with each other are prohibited to a separate State; and no other means of acquiring territory exist. By depriving every State of the means of exercising the right of acquiring territory, the constitution has deprived each separate State of the right itself. Neither the means nor the right of acquiring territory are forbidden to the United States; on the contrary, in the fourth article

* Annals of Congress.

of the constitution, congress is empowered 'to dispose of and regulate the territory belonging to the United States.' This recognizes the right of the United States to hold territory. The means of acquiring territory consist of war and compact; both are expressly surrendered to Congress and forbidden to the several States; and no right in a separate State to hold territory without its limit is recognized by the Constitution, nor any mode of effecting it possible, consistent with it. The means of acquiring and the right of holding territory, being both given to the United States and prohibited to each State, it follows that these attributes of sovereignty once held by each State are thus transferred to the United States; and that if the means of acquiring and the right of holding are equivalent to the right of acquiring territory, then this right merged from the separate States to the United States, as indispensably annexed to the treaty-making power and the power of making war; or indeed is literally given to the General Government by the Constitution. . . . The third article declares that 'the inhabitants of the ceded territory shall be incorporated in the Union of the United States.' And these words are said to require the territory to be erected into a State. This they do not express, and the words are literally satisfied by incorporating them into the Union as a territory and not as a State. The Constitution recognizes and the practice warrants an incorporation of a Territory and its inhabitants into the Union without admitting either as a State. And this construction of the first member of the article is necessary to shield its two other members from a charge of surplusage and even absurdity. For if the words 'the inhabitants of the ceded territory shall be incorporated in the Union of the United States' intended that Louisiana and its inhabitants should become a State in the Union of States, there existed no reason for proceeding to stipulate that these same inhabitants should be made citizens as soon as possible according to the principles of the Federal Constitution. Their admission into the Union of States would have made them citizens of the United States. Is it not then absurd to suppose that the first member of this third article, intended to admit Louisiana into the Union as a State, which would instantly entitle the inhabitants to the benefit of the articles of the Constitution declaring that 'the citizens of each State shall be entitled to all the privileges and immunities of citizens in the federal States,' and yet to have gone on to stipulate for citizenship under the limitation 'as soon as possible according to the principles of the Federal Constitution' after it

had been bestowed without limitation? Again: the concluding member of the article is to bestow 'protection in the meantime;' incorporating this stipulation and the stipulation for citizenship with the construction which accuses the treaty of unconstitutionality, the article altogether must be understood thus: The inhabitants of the ceded territory shall be taken into the Union of States, which will instantly give them all the rights of citizenship, after which they shall be made citizens as soon as possible; and after they are taken into the Union of States, they shall be protected in the interim between becoming a State in the Union and being made citizens in their liberty, property and religion."

Mr. Tracy, of Connecticut, opposed the bill. He said, "The paragraph in the Constitution which says that new States may be admitted by Congress into this Union,' has been quoted to justify this treaty. To this two answers may be given, either of which is conclusive in my favor. First, if Congress have the power collectively of admitting Louisiana, it cannot be vested in the President and Senate alone. Second, Congress have no power to admit new foreign States into the Union, without the consent of the old partners. The article of the Constitution, if any person will take the trouble to examine it, refers to domestic States only, and not at all to foreign States; and it is unreasonable to suppose that Congress should, by a majority only admit new foreign States, and swallow up by it the old partners, when two-thirds of all the members are made requisite for the least alteration in the Constitution. The words of the Constitution are completely satisfied by a construction which shall include only the admission of domestic States, who were all parties to the Revolutionary war and to the compact; and the spirit of the association seems to embrace no other. . . . . The seventh article admits for twelve years the ships of France and Spain into the ceded territory free of foreign duty—this is giving a commercial preference to those ports over the other ports of the United States; because it is well known that a duty of forty-four cents on tonnage and ten per cent on duties is paid by all foreign ships or vessels in all the ports of the United States. If it be said, we must repeal those laws and then the preference will cease, the answer is that this seventh article gives the exclusive right of entering the ports of Louisiana to the ships of France and Spain, and if our discriminating duties were repealed this day the preference would be given to the ports of the United States against those of Louisiana, so that the pref-

erence by any regulation of commerce or revenue which the Constitution expressly prohibits from being given to the ports of one State over those of another, would be given by this treaty in violation of the Constitution. I acknowledge if Louisiana is not admitted into the Union and if there is no promise to admit her, then this part of our argument will not apply. . . . I shall be asked, sir, what can be done? To this question I have two answers: One is, that nothing unconstitutional can or ought to be done; and if it be ever so desirable that we acquire foreign States and the navigation of the Mississippi, etc., no excuse can be formed for violating the Constitution; and if all those desirable effects cannot take place without violating it, they must be given up. But another and more satisfactory answer can be given. I have no doubt but we can obtain territory either by conquest or compact and hold it, even all Louisiana and a thousand times more, if you please, without violating the Constitution. We can hold territory; but to admit the inhabitants into the Union to make citizens of them and States, by treaty, we cannot constitutionally do; and no subsequent act of legislation or even ordinary amendment to our constitution can legalize such measures. If done at all they must be done by universal consent of all the States or partners to our political association. And this universal consent I am positive can never be obtained to such a pernicious measure as the admission of Louisiana, of a world, and such a world, into our Union."

Mr. Breckenridge of Kentucky spoke eloquently in favor of the bill and said among other things that "The so much scouted process of negotiation was persisted in (for the acquirement of rights on the Mississippi), and instead of restoring the right of deposit and securing more effectually for the future our right to navigate the Mississippi, the Mississippi itself was acquired and everything which appertained to it. I did suppose that those gentlemen who at the last session so strongly urged war measures for the attainment of this object, upon an avowal that it was too important to trust to the tardy and less effectual process of negotiation, would have stood foremost in carrying the treaty into effect, and that the peaceful mode by which it was acquired would not lessen with them the importance of the acquisition. . . . If my opinion were of any consequence, I should be free to declare that this transaction from its commencement to its close, not only as to the mode in which it was pursued, but as to the object achieved, is one of the most splendid which the annals of any nation can produce. To acquire an

empire of perhaps half the extent of the one we possessed, from the most powerful and warlike nation on earth without bloodshed, without the oppression of a single individual, without in the least embarrassing the ordinary operations of your finances, and all this through the peaceful forms of negotiation, and in despite, too, of the opposition of a considerable portion of the community, is an achievement of which the archives of the predecessors at least of those now in office, cannot furnish a parallel . . . Why not acquire territory on the west, as well as on the east side of the Mississippi? Is the Goddess of Liberty restrained by water courses? Is she governed by geographical limits? Is her dominion on this continent confined to the east side of the Mississippi? So far from believing the doctrine that a Republic ought to be confined within narrow limits, I believe on the contrary that the more extensive its dominion the more safe and more durable it will be. In proportion to the number of hands you intrust the precious blessings of a free government to, in the same proportion do you multiply the chances for their preservation. I entertain, therefore, no fears for the Confederacy on account of its extent. The American people too well know the art of governing and of being governed to become the victims of party factions or of domestic tyranny. They not only understand the true theory of a free government, but as well understand a much rarer thing, the true art of practicing it. . . . It is evident, as this country had passed out of the hands of Spain, that whether it remained with France, or should be acquired by England, its population would have been attempted. Such is the policy of all nations but Spain. From whence would that population come? Certainly not from Europe. It would come almost exclusively from the United States. The question then would simply be, Is the Confederacy more in danger from Louisiana when colonized by American people under American jurisdiction than when populated by Americans under the control of some foreign, powerful and rival nation? Or, in other words, whether it would be safer for the United States to populate this country when and how she pleased, or permit some foreign nation to do it at her expense? . . . The gentlemen admit, if I do understand them, that the acquisition of a part, at least, of this country is essential to the United States and must be made. That this acquisition must extend to the soil; and to use the words of their resolutions last session, 'that it is not consistent with the dignity of the Union to hold a right so important by a tenure so uncertain.' How,

I ask, is this 'certain tenure' to be acquired but by conquest or a purchase of the soil? Did not gentlemen intend when they urged its seizure that the United States, if successful, should hold it in absolute sovereignty? Were any Constitutional difficulties then in the way? And will they now be so good as to point out that part of the Constitution which authorizes us to acquire territory by conquest, but forbids us to acquire it by treaty? . . . Have the gentlemen who intend to vote against this measure well weighed the state of things which will result in case they should be successful in their opposition? Is not the national honor pledged to procure this right? What course do gentlemen mean to pursue to attain it? Or do they mean to abandon near a million of your western citizens to ruin and despair? If you reject this treaty, with what face can you open another negotiation? What President would venture another mission, or what minister could be prevailed on to be made the instrument of another negotiation? You adopt the treaty, direct possession to be taken of the country, and then refuse to pay for it! What palliation can we offer to our western citizens for a conduct like this?"

Mr. Cocke, of Tennessee, represented the sentiments of the Western settlers when he said, "What must we think of gentlemen in whom this sudden change has taken place and who now exclaim against the passage of this bill, when we recollect that last winter they were ready to storm the Spanish garrisons, and who then promised by their valor to secure us a free trade down the Mississippi and to make New Orleans and the Floridas their own? Did the Constitution then for a barrier against them? They have not only voted against the treaty that secures to us more than they could have contemplated by their arms and their valor, but they have also voted against the law for carrying the objects of that treaty into effect after the treaty has been ratified and the exchange of ratifications taken place in due form; and now we hear those warlike spirits expressing their fears that the western country will soon become too powerful for the East, and that a separation must inevitably take place between us. I ask gentlemen the ground on which they build their fears? It cannot be that we have paid less respect to the laws of the Union than any other portion of our fellow citizens; or have we in any instance shown less regard for our Government or its honest administration. Is it then that gentlemen had determined in their own minds to treat us with such marked indifference or injustice as

should rouse us to just resentment? When that shall be the case, I agree with my friend from Kentucky, that there is a point beyond which we cannot go. Let not gentlemen be alarmed at the acquisition of Louisiana, this New World as they please to call it, and which they seem at so great a loss to know what to do with. . . . I hope gentlemen will excuse me if I again repeat a desire to know the extent of their objects when they so loudly clamored for war. Were I as suspicious as themselves I might readily indulge a belief from the present state of things, that they wished to check the rising growth of the Western people by getting them into a war, make them a handsome bow and leave them to fight their battles. But happily our treaty secures against all such apprehensions. . . . And I again assure gentlemen that I am not among those who believe that France, Spain or even the British government would govern the Western country more to our interest than we do; nor do I credit a doctrine so absurd as to believe the people of the Western country will abandon their interest and prostitute their honor to create dangers so imminent as the gentleman from Connecticut (Mr. Hillhouse) seems to apprehend, and who is so fearful of the day in which the Western people shall give laws to the Union; but if ever it should so happen, I hope they will be at least as just and salutary as they were when this honorable gentleman and his friends formed the political majority in this House."

The remarks of Mr. Adams, of Massachusetts, voiced perhaps better than those of any other speaker the real sentiments and opinions of the senators. He said, "For my own part I am free to confess that the third article and more especially the seventh, contain engagements placing us in a dilemma, from which I see no possible mode of extricating ourselves but by an amendment, or rather an addition to the Constitution. The gentleman from Connecticut (Mr. Tracy) both on a former occasion and in this day's debate, appears to me to have shown this to demonstration. But what is this more than saying, that the President and Senate bound the nation to engagements which require the cooperation of more extensive powers than theirs to carry them into execution? Nothing is more common in the negotiations between nation and nation than for a minister to agree to and sign articles beyond the extent of his powers. This is what your ministers in the very case before you have confessedly done. It is well known that their powers did not authorize them to conclude this treaty; but they acted for the benefit of their country, and this house by a large majority has advised to the ratification of their proceedings.

Suppose then not only that the ministers who signed, but the President and Senate who ratified this compact, have exceeded their powers. Suppose that the other House of Congress who have given their assent by passing this and other bills for the fulfillment of the obligations it imposes on us, have exceeded their powers. Nay, suppose even that the majority of States competent to amend the Constitution in other cases, could not amend it in this without exceeding their powers—and this is the extremest point to which any gentleman on this floor has extended his scruples—suppose all this and there still remains in the country a power competent to adopt and sanction every part of our engagements and to carry them into execution. For notwithstanding the objections and apprehensions of many individuals, of many wise, able and excellent men in various parts of the Union, yet such is the public favor attending the transaction which commenced by the negotiation of this treaty and which I hope will terminate in our full, undisturbed and undisputed possession of the ceded territory, that I firmly believe if an amendment to the Constitution amply sufficient for the accomplishment of everything for which we have contracted shall be proposed as I think it ought, it will be adopted by the Legislature of every State in the Union."

The bill providing for the issuance of stock to be used in paying for Louisiana passed the senate—yeas 26, nays 5, those voting in the negative being James Hillhouse, Timothy Pickering, Uriah Tracy, William H. Wells and Samuel White, the latter two of Delaware. Senators Adams, Olcott and Plumer, who had voted against the bill authorizing the president to take possession of Louisiana, voted in favor of this bill. The following is the text of the act in full, authorizing the president to take possession of Louisiana, as passed by the senate with the house amendments:*

"An Act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the thirtieth of April last, and for the temporary government thereof.

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be, and he is hereby, authorized to take possession of, and to occupy the territories ceded by France to the United States, by the treaty concluded at Paris on the thirtieth day of April last, between the two nations, and that he may for that purpose, and in order to maintain in the said terri-

* Annals of Congress.

tories the authority of the United States, employ any part of the army or navy of the United States, and of the force authorized by an act passed the third day of March last, entitled An Act directing a detachment from the militia of the United States, and for erecting certain arsenals, which he may deem necessary; and so much of the sum appropriated by the said act as may be necessary, is hereby appropriated for the purpose of carrying this act into effect; to be applied under the direction of the President of the United States.

"Sec. 2. *And be it further enacted,* That until the expiration of the present session of Congress, unless provision for the temporary government of the said territories be sooner made by Congress, all the military, civil and judicial powers exercised by the officers of the existing government of the same, shall be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct, for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property and religion."

"Approved, October 31, 1803."

In order to understand the attitude of the senators toward these bills, a consideration of previous political occurrences will be necessary. Near the close of Washington's administration two parties were developed—the Federalists led by Adams, Hamilton, and others, and the Republicans, of whom Jefferson was the leader. In 1798, when war with both France and Spain seemed inevitable, the Federalists were charged by the Republicans with the responsibility of the dangerous and deplorable state of affairs. This charge, of course, was unfounded, because it was well known that the anger of France was kindled by what she considered the violation of the treaty of 1778 in the refusal of the United States to encourage her in her war against Great Britain and in preventing her from sending out privateers to prey on British commerce from the ports of America, both of which stipulations, the French minister argued, were incumbent upon the United States to perform under that treaty. In retaliation for this unfounded charge, the Federalists, when the interdiction of the deposits at New Orleans was promulgated and the western country thrown into an uproar, demanded the forcible occupation of that city and the lower Mississippi; and when their demands were rejected by congress they endeavored to cast the responsibility for the distress upon the administration. But the policy of negotiation instead of war prevailed, and finally the interdiction was revoked. When France

ceded Louisiana to the United States, the men who had previously advocated taking forcible possession of New Orleans, were the ones to oppose the necessary proceedings under the stipulations of the cession treaty to place the province under American control. Very few, if any in earnest, opposed the acquirement of Louisiana; the opposition was, in almost every instance, based upon other grounds. It was a political maneuver against proceedings emanating from the majority party and the administration, and not an attempt to prevent the acquirement of Louisiana. In addition, individual senators, particularly of the New England states, entertained lukewarm sentiments toward the western section of the country, through mistaken notions, and notably toward the unexplored and almost wholly unknown wilderness of Louisiana and its Spanish, French and mixed inhabitants. Jefferson himself was a strict constructionist of the constitution, but changed his views in order to secure Louisiana and thus add a magnificent domain to the territory of the United States. This expansion applied to the constitution has since been several times repeated, to the advantage, credit and glory of the country.

The policy of Jefferson and of the Republicans was to limit instead of to extend the powers of the general government. The Republicans had their origin mainly during the second term of Washington when centralization went so far as to threaten the assumption of other governmental functions by the president. Thus intrenched, the Federalists surrendered vast privileges to Great Britain, thus kindling the jealousy and hostility of both France and Spain. The election of Jefferson to the presidency was a protest against the concentration of so much power in the hands of the president. The Republicans favored a strict construction of the constitution; the Federalists the reverse. When the Louisiana question came up for immediate settlement, the leaders of the administration saw that they must either abandon their policy of strict construction or adopt an amendment to the constitution. Both eventualities were hurriedly yet amply considered. While the necessary amendment would undoubtedly carry, it would consume too much time. It was necessary to make the greatest haste for two reasons: 1. France might get sick of the bargain and back out; 2. England might take possession of New Orleans. In this extremity, be it said to the undying credit of the American statesmen, partisanship was sunk out of sight, and the broad and accurate foresight of seventy-six, which saw only the prosperity and glory of the republic, dictated the correct course to be pursued. The partisan disappeared and the states-

man rose triumphant. The magnificent province was promptly accepted. But it should be noted that, in the senate debates, the Federalists were the strict constructionists, while the Republicans ridiculed their views.

The proceedings in the house on the Louisiana treaty were interesting and memorable. On October 17, the president's message was received, read and referred to the committee of the whole house on the state of the Union. The president's second message (see supra for a summary of both messages) was received, read and referred to the same committee on Saturday, October 22, with an order for its consideration the following Monday. On that date the following resolution was introduced by Roger Griswold of Connecticut, the leader of the opposition in the house:*

"*Resolved*, That the President of the United States be requested to cause to be laid before this House a copy of the treaty between the French Republic and Spain, of the first of October, one thousand eight hundred, together with a copy of the deed of cession from Spain, executed in pursuance of the same treaty, conveying Louisiana to France (if any such deed exists); also copies of such correspondence between the Government of the United States and the Government or minister of Spain (if any such correspondence has taken place), as will show the assent or dissent of Spain to the purchase of Louisiana by the United States; together with copies of such other documents as may be in the department of State, or any other department of this Government, tending to ascertain whether the United States have, in fact, acquired any title to the province of Louisiana by the treaty with France, of the thirtieth of April, one thousand eight hundred and three."

In support of his resolution, Mr. Griswold offered the following remarks: "In the treaty between Spain and France (October 1, 1800) the former stipulated to cede to the latter, upon certain conditions, the province of Louisiana. The treaty between the United States and the French Government does not ascertain whether these terms have been complied with by France, or whether the cession has been actually made by Spain to France. All that appears is a promise made by Spain to cede. If the terms stipulated by France have not been complied with, and Spain has not delivered the province to France, then it results that France has no title, and of a consequence that the United States has acquired no title from France. If this be correct, the consequence will be

* Annals of Congress.

that we have acquired no new territory or new subjects, and that it is perfectly idle to spend the time in passing laws for possessing the territory and governing the people. This point not being ascertained by the language of the treaty, it may be important to obtain documents that may satisfy the House whether the United States have acquired either new territory or new subjects. In the treaty lately concluded with France, the treaty between France and Spain is referred to; only a part of it is copied. The treaty referred to must be a public treaty. In the nature of things it must be the title-deed for the province of Louisiana. The Government must have a copy of it. As there is but a part recited, it is evidently imperfect. It becomes therefore necessary to be furnished with the whole, in order to ascertain the conditions relative to the Duke of Parma; it also becomes necessary to get the deed of cession; for the promise to cede is no cession. This deed of cession, it is to be presumed, is in the possession of the government. It is also important to know under what circumstances Louisiana is to be taken possession of, and whether with the consent of Spain, as she is still possessed of it. If it is to be taken possession of with her consent, the possession will be peaceable and one kind of provision will be necessary; but if it is to be taken possession of in opposition to Spain, a different provision may be necessary. I believe it will be admitted that, by the express terms of the treaty, the United States has neither acquired new territory nor new subjects. I therefore consider it my duty, before the House goes into a consideration of the resolutions laid on the table, to submit this resolution."

In answering these remarks, Mr. Randolph said, "The treaty which we are now called upon to sanction, has been hailed by the acclamation of the nation. It is not difficult to foresee, from the opinions manifested in every quarter, that it will receive the cordial approbation of a triumphant majority of this House. If such be the general opinion—if we are not barely satisfied with the terms of this treaty, but lost in astonishment at the all-important benefits which we have so cheaply acquired, to what purpose do we ask information respecting the details of the negotiation? Has any one ventured to hint disapprobation of the conduct of the Ministers who have effected this negotiation? Has any one insinuated that our interests have been betrayed? If then we are satisfied as to the terms of this treaty and with the conduct of our Ministers abroad, let us pass the laws necessary for carrying it into effect. To refuse—to delay upon the plea now offered is to jeopardize the best interests of the Union. Shall we take excep-

tion to our own title? Shall we refuse the offered possession? Shall this refusal proceed from those who so lately affirmed that we ought to pursue this very object at every national hazard? I should rather suppose the eagerness of gentlemen would be ready to outstrip the forms of law in making themselves masters of this country, than that now when it is offered to our grasp, they should display an unwillingness or at least an indifference for that which so lately was all-important to them. After the message which the President has sent us, to demand if indeed we have acquired any new subjects, as the gentleman expresses it, which renders the exercise of our legislative functions necessary, would be nothing less than a mockery of him, of this solemn business and of ourselves. Cautionary provisions may be introduced into the laws for securing us against every hazard, although from the nature of our stipulations we are exposed to none. We retain in our own hands the consideration money even after we have possession. If I could for a moment believe that even a minority, respectable as to numbers, required any other evidence of the fact of our having acquired new territory and people to govern than the extract from the treaty which has just been read, I would readily concur with the gentleman from Connecticut in asking of the executive whether indeed we have a new accession of territory and of citizens, or as the gentleman has been pleased to express himself, subjects to govern. I hope the resolution will not be agreed to."

Mr. Goddard of Connecticut spoke in favor of the resolution and said, "There is no evidence that France has an incontestible title to Louisiana. If in virtue of this treaty we purchase a promise on the part of his Catholic Majesty to cede, and not an incontestible title, I will ask if the promise constitutes a title? This and this only is the language of the treaty of October 1, 1800. If this is the case, is it not proper to inquire whether there are other acts by which Spain has ceded Louisiana to France? Such acts may exist. Certain stipulations were made by France to Spain on which the cession depended. Do we not then wish to know whether these stipulations have been fulfilled and whether they are binding, or whether Spain has waived them? Are there in existence any documents to that effect? It has been hinted that such documents exist in the newspapers; but are we, in an affair of this magnitude, to be referred to the dictum of a newspaper? I apprehend that this is a novel mode of legislation. What is the Commissary to be sent by the Government of France to Louisiana to do? He is in the first instance to receive the province from

Spain. Can he transmit it to the United States before he receives it from Spain? We require to know, if Spain refuses to deliver Louisiana to France, can France transmit it to us? We desire to know whether there is any prospect of a refusal on the part of Spain. Suppose we shall receive the colony from France, under the dictation of the First Consul to Spain, without experiencing any opposition from her. May not the time arrive, on a revolution in the affairs of Europe, when she will inquire by what title we hold it? Is it not proper then for us to obtain papers, by which our title may be fully understood?"

Mr. Thatcher, of Massachusetts, said, "The first article of the Louisiana treaty goes to say that Spain may have altered the boundaries of that province differently from what they were when France before possessed it. And for what we know she has done so. Hence the importance of seeing the papers asked for. If we obtain the bare possession, it is one thing; the legal possession is another thing. It is one thing to govern the colony with a corps of civilians, and another and a different thing to govern it with an army. The President may perhaps have considered it a good bargain to obtain, for the payment of fifteen millions, the mere quit-claim of France to the province. At any rate it is proper that we should act with our eyes open; and therefore the importance of having a copy of the treaty entered into between the Governments of Spain and France, or evidence that Spain has acquiesced in the cession to the United States."

The resolution was opposed by Mr. Nicholson, of Maryland, who said, "I agree with gentlemen that if a majority of the House entertain any doubt as to the validity of the title we have acquired, they ought to call for papers; and I have no doubt, if there is any dissatisfaction, they will call. I should have no objection to vote for the resolution if it was confined to proper objects, not indeed to satisfy myself, for I am already fully satisfied, but to satisfy other gentlemen; to satisfy the American people that the insinuations thrown out about the title are totally without foundation. The resolution in its present shape, however, is highly improper; it looks to extrinsic circumstances and contemplates an inquiry into subjects totally unconnected with the treaty with France. What has Spain to do in this business? Gentlemen ask if she has acquiesced in our purchase and call for her correspondence with our Government. What is the acquiescence of Spain to us? If the House is satisfied from the information laid on the table, that Spain has ceded Louisiana to France, and that France has since ceded it to the United States, what more do they require? Are

we not an independent nation? Have we not a right to make treaties for ourselves without asking leave of Spain? What is it to us whether she acquiesces or not? She is no party to the treaty of cession; she has no claim to the ceded territory. Are we to pause till Spain thinks proper to consent, or are we to inquire whether like a cross child she has thrown away her rattle and cries for it afterward? The treaty itself and the conventions attached to it, furnish all the necessary information. Louisiana is ceded to the United States with the same boundaries that it had before been ceded with by Spain to France; and France has obliged herself to send a commissary to New Orleans to receive the possession from Spain and to transfer it to us. For this the United States are to pay fifteen millions of dollars to the French Government. But how and when? Not immediately; not till we have actually acquired the possession. And if France shall fail to put us into actual possession, the United States are not bound to pay a single dollar. So that the call for papers can be of no possible use. I shall have no objection to have the treaty of San Ildefonso laid before the House, if it is in the possession of the Executive. In all probability, however, this is not the case, as it is known to be a secret treaty on other subjects of great importance between France and Spain. If there are any other papers which can give gentlemen more information, I have no objection either that these shall be laid before them for their satisfaction. One very important paper, I know from high authority, is certainly in existence and possibly may be in the power of the Executive. This is a formal order, under the royal signature of Spain, commanding the Spanish officers at New Orleans to deliver the province to the French Prefect, which I consider equal perhaps superior to any deed of cession; for it is equal to an express recognition on the part of Spain that France has performed all the conditions referred to in the Treaty of St. Ildefonso. It is an acknowledgment that Spain has no further claims upon Louisiana and will show that any interference on her part ought to have no influence on the American Government. To call for the correspondence between Spain and the United States, if there is any such, I shall not assent to, as it can be of no possible importance."

The resolution was also opposed by Mr. Mitchill, of New York. Among other pertinent things he said, "The gentleman from Connecticut (Mr. Griswold) says that the cession expressed in the treaty, is no cession at all but a mere pretence. He says that our title is derived from France, who has no title whatever to Louisi-

ana, and of course can convey none to the United States. I differ in opinion entirely with that gentleman. The treaty contains internal evidence enough for me to act upon. And it is accompanied with extrinsic events and circumstances of great publicity. The united evidence of these we cannot resist without rejecting all human testimony and sinking into absolute scepticism. . . . In the treaty of St. Ildefonso Spain promises to cede; but the stipulation is accompanied with a condition which, as alleged by the mover of the resolution, has never been performed. This condition, though not expressed at large in the first article, is well understood to be the establishment of the Duke of Parma in the full and entire possession of Tuscany, and the making him a monarch under the title of the King of Etruria. This has been done in the face of all Europe. And the deliberations in the Diet of Ratisbon, concerning German indemnities, shows that the Prince, who was turned out of that country to make room for a younger member of the blood royal of Spain, was one of those who suffered a loss of dominion and revenue when Italy was borne down by the victorious arms of France. I urge upon the attention of the House, that France has put the Duke of Parma on the throne of Etruria, and has thereby acquired a title to Louisiana. This was the consideration of price with which the American province was purchased from Spain. But the right of France to Louisiana does not rest here—it is not a *nudum pactum*—so far from it, effective measures have been adopted to carry it into operation by adding possession to right. A commissioner has been sent to New Orleans on the part of the French Republic to receive the province of Louisiana from Spain. He is required to do every act necessary, as well to receive from the officers of his Catholic Majesty the said country and its dependencies, if it has not been already done, as to transmit it in the name of the French Republic to the commissary or agent of the United States. . . . An objection has been raised on the ground of the uncertainty of the limits of Louisiana. I do not feel the force of this. I know perfectly well that uncertainty overhangs the subject; but this will be dissipated by degrees as the unknown regions shall be visited and described. We may then proceed to adjust the limits in a manner similar to that we have repeatedly adopted with respect to the present territory of the United States. . . . The operation of the resolution if adopted will certainly be to procrastinate and embarrass; and I do not discern what good will be wrought at this time by agreeing to it. There is an additional reason and that a very weighty

one for refusing the motion at this time. By the treaty it must 'be ratified in good and due form and the ratifications exchanged within six months after execution.' The date of this deed of cession is the 30th of April last; and consequently the limited time will expire on the 30th of the current month. A doubt has been expressed by some gentlemen for whose judgment I entertain the greatest respect whether the ratification will be consummated in 'good and due form,' unless the declaration and act of this House shall follow up the determination of the President and Senate. It will, therefore, be better to proceed without delay to comply with all the prerequisites." He therefore moved a postponement of the resolution to the 30th of the following May.

The motion to postpone the resolution of Mr. Griswold led to a long discussion, during which many arguments, pro and con, were advanced on the Louisiana question. Mr. Griswold continued, "By the first article of the treaty of St. Ildefonso it appears that Spain promised to cede Louisiana to France on certain stipulations. She *promises* to cede. Gentlemen cannot mistake the import of the language; it is a promise and not a cession. Will it be said that France acquired any title by this promise? This cannot be contended; the treaty does not declare whether the terms stipulated by France have been complied with, or whether the cession was actually made. The terms of the treaty are 'whereas in pursuance of the treaty and particularly of the third article the French Republic has an incontestible title,' etc. Will gentlemen say that this assertion on the part of France gives her a title? It gives her no title. An assertion by France [illegible] not [illegible] Spain."

Mr. Randolph, in answering this argument, did not controvert it; but showed at length the utter lack of wisdom of placing technicalities in the way of such an important acquisition. He said, "How are we to reconcile this reluctant caution to the doctrine of forcible possession so lately inculcated by gentlemen? At one time it was necessary to possess ourselves of the key of the Mississippi on any terms and in any way. There was no waiting to examine into the title of other nations or scarcely into our own. The Mississippi must be had at every hazard and in any mode. Now that it is offered us, gentlemen can devise no mode of gettting it. They are so embarrassed with forms, which sometime past were held as nothing, that the value of the Mississippi, which was held as everything, has sunk in their estimation. That Mississippi, for whose acquisition the nation was to be precipitated at once into war, is now of so little consequence

that the most trivial form outweighs it in their estimation. I had expected to see those gentlemen foremost in zeal for taking possession of the country in question, and so far from throwing impediments in the way, that in case Spain manifested any opposition to the step, they would have been the first to originate measures for compelling her assent. This would have been consistent."

The motion to postpone was withdrawn and the house proceeded to vote upon the resolution in sections. On the first member, "*Resolved*, That the President of the United States be requested to cause to be laid before this House a copy of the treaty between the French Republic and Spain, of the 1st of October, 1800," the house divided, the ayes being 59 and the noes 59; whereupon the speaker declared himself in the affirmative and the member was carried. All the other members of Mr. Griswold's resolution were rejected. Mr. Nicholson had moved to amend the second member by adding, "Together with a copy of any instrument in possession of the Executive, showing that the Spanish government has ordered the province of Louisiana to be delivered to the Commissary or other agent of the French Government," and this amendment was agreed to. But the resolution as amended was then voted upon and lost—yeas 57, nays 59.* The rejection of the resolution merely showed that the friends of the administration were unwilling to embarrass the executive in measures to confirm the treaty and carry it into effect.

On the 25th the house resolved itself into a committee of the whole to consider the messages of the president, and under the following resolution, which had been previously moved, proceeded to a consideration of the Louisiana treaty: "*Resolved*, That provision ought to be made for carrying into effect the treaty and convention concluded at Paris on the 30th of April, 1803, between the United States of America and the French Republic."* Mr. Gaylord Griswold of New York said that he found in the third article of the Louisiana treaty "a compact between the French Government and that of the United States to admit to citizenship persons out of the jurisdiction of the United States as it now is, and to admit territory out of the United States to be incorporated into the Union. I do not find in the Constitution such a power vested in the President and Senate. If such a power be not expressly vested, it must be reserved to the people. It was not consistent with the spirit of the Constitution that territory other

* Annals of Congress.

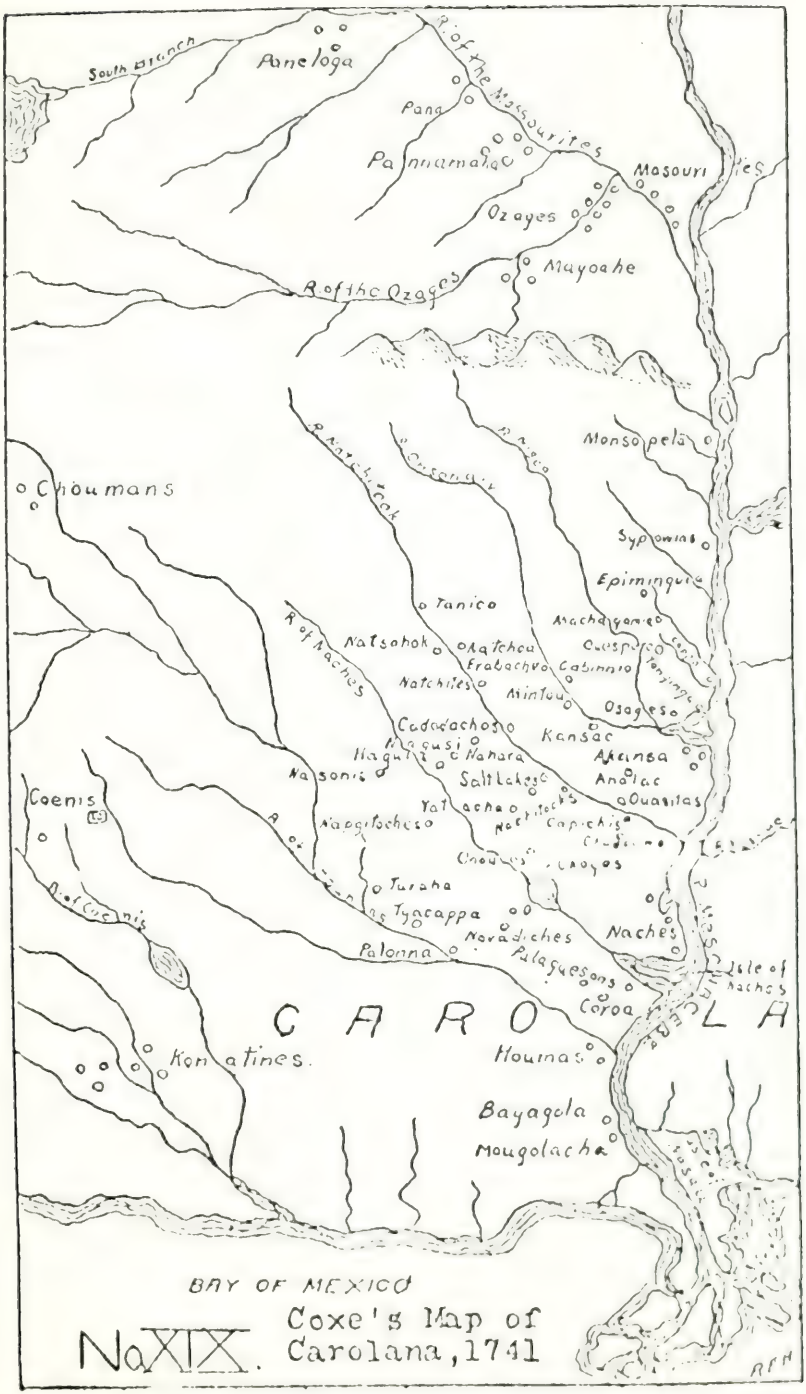
than that attached to the United States at the time of the adoption of the Constitution should be admitted; because at that time the persons who formed the Constitution of the United States had a particular respect to the then subsisting territory. They carried their ideas to the time when there might be an extended population; but they did not carry them forward to the time when an addition might be made to the Union of a territory equal to the whole United States, which additional territory might overbalance the existing territory, and thereby the rights of the present citizens of the United States be swallowed up and lost. Such a measure could not be consistent either with the spirit or the genius of the government. . . . But if the right of extending our territory be given by the Constitution, its exercise is vested in the Legislative branches of the Government. In the third section of the fourth article of the Constitution it is said, 'New States may be admitted by the Congress into this Union.' Congress may admit new States, but according to my construction of this article, are confined to the territory belonging to the United States at the formation of the Constitution—to the territory then within the United States. Existing territory not within the limits of any particular States may be incorporated into the Union. I contend, therefore, that the power to incorporate new territory did not exist; and that if it did exist it belonged to the Legislature and not the Executive to incorporate it in the Union. If this is the case it is the duty of the House to resist the usurped power exercised by the Executive."

In reply Mr. Randolph said, "I understand the gentleman from New York as denying that there exists in the United States as such a capacity to acquire territory; that by the Constitution they are restricted to the limits which existed at the time of its adoption. If this position be correct, it undeniable follows that those limits must have been accurately defined and generally known at the time when the Government took effect. Either they have been particularly described in the constitutional compact, or are referred to as settled beyond dispute and universally acknowledged. But this is not the fact in either case. The Constitution not only does not describe any particular boundary beyond which the United States could not extend, but our boundary was unsettled on our northeastern, southern and northwestern frontier at the time of its adoption. . . . That the Constitution should tie us down to particular limits without expressing those limits; that we should be restrained to the then boundaries of the United States when it is in proof to the committee that no such bounds existed or do now

exist, was altogether incomprehensible and inadmissible. For if the Constitution meant the practical limits of the United States, the extent of country which we then *possessed*—our recent acquisitions on the side of Canada and the Natchez can not be defended. My position is not only maintainable by the reason of the Constitution, but by the practice under it. Congress have expressed in their own acts a solemn recognition of the principle that the United States in their Federative capacity may acquire and have acquired territory; namely, the territory in dispute between Georgia and Florida. . . . No gentleman will deny the right of the President to initiate business here by message recommending particular subjects to our attention. If the Government of the United States possess the Constitutional power to acquire territory from foreign States, the Executive as the organ by which we communicate with such States must be the prime agent in negotiating such an acquisition. Conceding then that the power of confirming this act and annexing to the United States the territory thus acquired ultimately rests with congress, where has been the invasion of the privileges of that body? Does not the President of the United States submit this subject to Congress for their sanction? Does he not recognize the principle, which I trust we will never give up, that no treaty is binding until we pass the laws for executing it—that the powers conferred by the Constitution on Congress cannot be modified or abridged by any treaty whatever—that the subjects of which they have cognizance cannot in any way be taken out of their jurisdiction? In this procedure nothing is to be seen but a respect on the part of the Executive for our rights; a recognition of a discretion on our part to accord or refuse our sanction. Where then is the violation of our rights? As to the initiative in a matter like this, it necessarily devolves on the Executive. . . . Let us suppose that our negotiations for our rights on the Mississippi, instead of its present happy issue, had terminated in a refusal of justice. I believe there would in that event have been but one sentiment in this House and in this nation. We should have appealed to arms, and if fortune had only been as impartial as our cause was just, we should have possessed ourselves of at least a part of the territory in question. Does any one dream of denying our right to the forcible possession of New Orleans if necessary to secure the navigation of the Mississippi? Can a nation acquire by force that which she cannot acquire by treaty? Must not the eventual right to the country possessed by conquest be confirmed by treaty? And is it not idle to contend that so long as we employ force we may occupy the

country but no longer—that we cannot retain it by convenience . . . Now as to the expediency of the measure. What is the state of our trade in relation to the ceded territory? But a short time ago who would have asked more than to be put on an equal footing with the possessors of that country? We now have the sovereignty of it and only stipulate that (for twelve years) France and Spain shall be admitted, not on an equal footing with us, but that their vessels laden with their own produce, not otherwise, shall pay no higher duties than our own. At the expiration of that period we can give a decided proponderance to our trade by discriminating duties. Will the hardy and enterprising New Englander shrink from a competition with France and Spain on these terms? Cannot the discriminating duties be still enforced by the existing regulations in respect to imports from New Orleans to other parts of the United States? So far from a clog on our commerce, does not this treaty unfetter the Mississippi trade and give us a preference over all other nations except the case of the French and Spanish vessels, laden with the produce of their respective countries, and there we are on a footing with them."

Continuing, Mr. Randolph said, "As long ago as the year 1673 the inhabitants of the French province of Canada explored the country on the Mississippi. A few years afterward (1685) La Salle with emigrants from old France, made a settlement on the Bay of St. Bernard, and at the close of the 17th century, previous to the existence of Pensacola, another French settlement was made by the Governor D'Iberville at M[illegible] and [illegible] the [illegible] of Dauphin or Massacre at the mouth of that bay. In 1712 a short time previous to the treaty of Utrecht, Louis XIV described the extent of the colony of Louisiana (by the settlements) in his grant of its exclusive commerce to Crozat. Three years subsequent to this the Spanish establishment at Pensacola was formed, as well as the settlements on the Adaes on the river Mexicana. After various conflicting efforts on both sides, the bay and river Perdido was established (from the peace of 1719) as the boundary between the French province of Louisiana on the one side and the Spanish province of Florida on the other, this river being nearly equi-distant between Mobile and Pensacola. Near the close of the war between England and France, rendered memorable for the unexampled success with which it was conducted by that unrivaled statesman, the great Lord Chatham, Spain became a party on the side of France. The loss of the Havana and other important dependencies, was the immediate consequence. In



NaXIX. Coxe's Map of Carolana, 1741

1762 France, by a secret treaty of contemporaneous date with the preliminary treaty of peace, relinquished Louisiana to Spain, as an indemnity for her losses, sustained by advocating the cause of France. By the definitive treaty of 1763, France ceded to England all that part of Louisiana which lies east of the Mississippi except the island of New Orleans—the rest of the province to Spain. It is to be observed that although ostensibly France ceded this country to England, virtually the cession was on the part of Spain, because France was no longer interested in the business, but as the friend of Spain (having previously relinquished the whole to her) and because in 1783 restitution was made by England, not to France, but to Spain. England having acquired this portion of Louisiana, together with the Spanish province of Florida, annexed to the former that part of Florida which lies west of the Aapalachicola and east of the Perdido, thereby forming the province of West Florida. It is only in English geography and during this period, from 1763 to 1783, that such a country as West Florida is known. For Spain, having acquired both the Floridas in 1783, re-annexed to Louisiana the country west of the Perdido subject to the government of New Orleans, and established the ancient boundaries of Florida, the country between the Perdido and Apalachicola being subject to the Governor of St. Augustine. By the treaty of St. Ildefonso, Spain ceded to France the province of Louisiana with the same extent that it now has in the hands of Spain': viz., to the Perdido, 'and that it had when France possessed it,' to the Perdido, and 'such as it should be after treaties subsequently entered into between Spain and other powers:' that is, saving to the United States the country given up by the treaty of San Lorenzo. We have succeeded to all the right of France. If the navigation of the Mississippi alone were of sufficient importance to justify war, surely what we have now gained by this treaty will be acknowledged to be inestimably valuable."*

Messrs. J. Lewis and Griffin of Virginia regarded the treaty as unconstitutional in the respect that "Congress possessed no power to give a commercial preference to one State over another; and if the ships of France and Spain are permitted to enter New Orleans on terms more advantageous than they are permitted to enter other ports of the United States, it is a palpable violation of the Constitution." Mr. Griffin also

* Annals of Congress.

observed that "the constitution says, 'Congress shall have power to regulate commerce with foreign nations.' Who are Congress? The Senate and House of Representatives. If, then, the President and Senate make a treaty for the regulation of commerce, they infringe the Constitution by doing that which Congress alone can do." Both gentlemen asked to be set right if they were wrong in their conclusions. Mr. Griffin further said, "I do fear that though this land is represented as flowing with milk and honey, it will prove a cemetery for the bodies of our citizens."

An eloquent speech made in favor of the treaty was delivered by Mr. Purviance of North Carolina. He said: "I am clearly and decidedly in favor of the resolution on your table, premising the appropriations for carrying the treaty between France and this country into effect. . . . It is true I am, and always have been, opposed to the general tenor of the present administration. It has not appeared to me to possess that bold, commanding aspect, that erect and resolute front, which ought to be assumed by the Executive of a free people, when claiming satisfaction for wrong sustained. It has not shown that strong, muscular, athletic shape, which is calculated to intimidate aggression, or which is enabled to resist it; nor do I think that it has manifested that firm, dignified, manly tone of virtue and of spirit which, resting on the love of a free people, and conscious of their strength, can ask for the prompt, direct and unequivocal satisfaction to which it is entitled, and being denied can take it. . . . It has to my mind somewhat resembled a militia subaltern, who in time of war directed his men not to fire on the enemy lest the enemy might fire again. Under such an administration, I have thought that it would be better to have the ceded territory on any terms than not to have it at all. . . . Yes, thank God! We have now a treaty, signed by themselves, in which they have voluntarily passed away the only means of annoyance which they possessed (meaning France). But I do not thank the honorable gentleman who is at the head of our Executive. At the time this negotiation was commenced, there could not be the smallest hope of its being carried into effect. The French consul had obtained it perhaps for the express purpose of carrying into effect his favorite scheme of universal domination; it might give him the chance of injuring the British, controlling the Spaniards, and dismembering America. Compared with these objects a handful of bank stock was of no more consequence to him than a handful of sand. His fleet and army were ready to sail, and his colonial prefect

had already arrived. But mark! The King of Great Britain, who at this crisis I take to have been by far the most able negotiator we had, declares war. The scene is now changed. That which France had refused to our intercessions, she was now compelled to grant from mere necessity. A state of warfare took place about the last of March, and the treaty was signed soon afterwards. As long as I retain the small stock of understanding which it has pleased God to give me, I shall never be induced to believe that it was owing in the smallest degree to the efficacy of diplomatic representation. The mind of that great man (Napoleon) is not made of such soft materials as to receive an impression from the collision of very gentle hands. . . . No, sir; had it not been for this happy coincidence of circumstances, the personal solicitations of our ministers would have been regarded with as listless an ear as if they had been whispered across the ocean. . . . If, then, the claim which has been transferred (Louisiana) should be invested with any latent embarrassment; if the court of Madrid has already signified any hostility to this treaty, in consequence of the non-performance of the stipulations contained in that of St. Ildefonso respecting the recognition of the late King of Etruria; if our possession should be opposed, or our right of property hereafter contested, let the President look to it. He only will become responsible for every drop of American blood which may be drawn in such a contest, as he ought to have communicated any information to this effect which he possessed, in order that our discretion might be regulated accordingly. As no such obstacles have been made known to us by the President, I will suppose that none such do exist, and I will therefore vote for the treaty."

Mr. Claiborne of Virginia declared his firm belief in the constitutionality and the expediency of the treaty. Mr. Sanford of North Carolina expressed similar views. Mr. Thatcher of Massachusetts opposed the treaty on constitutional grounds. He maintained that power not expressly delegated by the states was still held by them; that power to admit states to the Union was not granted to the president even admitting that it had been granted to congress; that it was not correct to state that congress had already practiced the principle of admitting territory; that the preference given to Frnch and Spanish vessels by the treaty could not be considered part of the purchase price, because Louisiana was bought from France alone, whereas preference was given to the vessels of both France and Spain; that the power contended for by the administration party implied the

power of alienating other parts of the United States, as Maine to Great Britain; and that to say the question was a leading, not a constitutional one was misleading, because all departments of the government, including president and senate, were bound by the constitution. Mr. Randolph corrected by stating that he had said "the preference of our ships over foreign ships was a legal regulation; and that therefore those gentlemen who were so tender with regard to the Constitution might have it in their power entirely to get rid of the Constitutional difficulty, by taking off from the ships of France and Spain such duties as were higher than the duties paid by American vessels. When I say this I speak for them and not for myself; nor shall I move to take off these heavy duties, as I do not feel the force of the Constitutional objections urged by gentlemen. The article of the treaty so often quoted shows that no preference is given to one port over another."

Mr. Smilie of Pennsylvania considered the "right of annexing territory incidental to all governments. If I am correct in this opinion, such a power is vested in some department of government in the United States. That it is not vested in the States is clear, as they are expressly divested of the right. They are by the Constitution expressly divested of the right of forming treaties and making war. It can then reside in the general Government only. It is a position that cannot be denied, that all societies possess the right of self protection. . . . The treaty says we are obliged to admit the inhabitants according to the principles of the Constitution. Suppose these principles forbid their admission; then we are not obliged to admit them. This follows as an absolute consequence from the premises."

Mr. Crowninshield of Massachusetts said: "Feeling as I do that we have acquired this country at a cheap price, that it is a necessary barrier in the southern and western quarters of the Union, that it offers immense advantages to us as an agricultural and commercial nation, I am highly in favor of the acquisition."

Mr. Griswold of Connecticut argued at considerable length against the treaty, although he said, "I do not personally feel any particular hostility to it." He presented objections both of constitutionality and expediency with greater power than any other representative, and said that "until those doubts were cleared up he should feel compelled to vote against carrying the treaty into execution." Among many important things which he said was the following: "It is clear that it was intended to incor-

porate the inhabitants of the ceded territory into the Union by the treaty itself, or to pledge the faith of the nation that such an incorporation should take place within a reasonable time. It is proper, therefore, to consider the question with a reference to both constructions. It is in my opinion scarcely possible for any gentleman on this floor to advance an opinion that the President and Senate may add to the members of the Union by treaty whenever they please, or, in the words of this treaty, may 'incorporate in the Union of the United States' a foreign nation who from interest or ambition may wish to become a member of our Government. Such a power would be directly repugnant to the original compact between the States, and a violation of the principles on which that compact was formed. It has been already well observed that the Union of the States was formed on the principles of a copartnership, and it would be absurd to suppose that the agents of the parties who have been appointed to execute the business of the compact in behalf of the principals, could admit a new partner without the consent of the parties themselves. And yet if the first construction is assumed, such must be the case under this Constitution, and the President and Senate may admit at will any foreign nation into this copartnership without the consent of the States. The Government of this country is formed by a union of States, and the people have declared that the Constitution was established 'to form a more perfect union of the United States.' The United States here mentioned cannot be mistaken. They were the States then in existence, and such other new States as should be formed, within the then limits of the Union, conformably to the provisions of the Constitution. Every measure, therefore, which tends to infringe the perfect union of the States herein described, is a violation of the first sentiment expressed in the constitution. The incorporation of a foreign nation into the Union, so far from tending to preserve the Union, is a direct inroad upon it; it destroys the perfect union contemplated between the original parties by interposing an alien and a stranger to share the powers of Government with them. The Government of the United States was not formed for the purpose of distributing its principles and advantages to foreign nations. It was formed with the sole view of securing those blessings to ourselves and our posterity. It follows from these principles that no power can reside in any public functionary to contract any engagement, or to pursue any measure which shall change the Union of the States. Nor was it necessary that any restrict-

ive clause should have been inserted in the Constitution to restrain the public agents from exercising these extraordinary powers, because the restriction grows out of the nature of the Government. The President with the advice of the Senate has undoubtedly the right to form treaties, but in exercising these powers he cannot barter away the Constitution or the rights of particular States. It is easy to conceive that it must have been considered very important by the original parties to the constitution, that the limits of the United States should not be extended. The Government having been formed by a union of States, it is supposable that the fear of an undue or preponderating influence in certain parts of this Union must have great weight in the minds of those who might apprehend that such an influence might ultimately injure the interests of the States to which they belonged; and although they might consent to become parties to the Union as it was then formed, it is highly probable that they would never have consented to such a connection if a new world was to be thrown into the scale to weigh down the influence which they might otherwise possess in the national councils. From this view of the subject, I have been persuaded that the framers of the Constitution never intended that a power should reside in the President and Senate to form a treaty by which a foreign nation and people shall be incorporated in the Union, and that this treaty so far as it stipulates for such an incorporation is void.

"A new territory and new subjects may undoubtedly be obtained by conquest and by purchase; but neither the conquest nor the purchase can incorporate them into the Union. They must remain in the condition of colonies and be governed accordingly. The objection to the third article is not that the province of Louisiana could not have been purchased, but that neither this nor any other foreign nation can be incorporated into the Union by treaty or by a law; and as this country has been ceded to the United States only under the condition of an incorporation, it results that if the condition is unconstitutional or impossible the cession itself falls to the ground. . . . The gentleman from Virginia (Mr. Randolph) has said that the discriminating duties of impost and tonnage are not a constitutional but a statute regulation. This is undoubtedly true, but it must be recollected that the statutes are in force, and so long as they remain unrepealed, the preference is given to the ports on the Mississippi and the uniformity of duties is violated; and it cannot most assurdly be correct to violate a principle of the Con-

stitution for a day under the expectation of curing the violation by a legislative interference. . . . The ships of France and Spain are to be admitted into New Orleans on the same terms with our own ships. The discriminating duty, therefore, in respect to them in that port is virtually repealed. But we obtain no repeal of the countervailing duties in French and Spanish ports. The consequence must be that while we are laboring under all the embarrassment of extra duties in their ports, they are liberated from every embarrassment in ours. The effect is easy to be seen: the whole trade from the mouth of the Mississippi to the French and Spanish colonies and probably to their European possessions, must ultimately be carried on in French and Spanish bottoms, to the entire exclusion of American ships. Nor will the injury stop here; both France and Spain will doubtless prefer procuring their supplies from the United States in their own ships, and while they hold the monopoly of the trade at the mouth of the Mississippi they will be able to draw from that point an abundant supply of flour and other articles of produce, to the great prejudice if not to the ruin of the trade from the Atlantic ports to the French and Spanish colonies."

One of the strongest arguments in favor of the resolution before the house was delivered by Mr. Nicholson of Maryland. He reviewed every feature of the proposed acquisition, and emphasized every argument in its favor. Among other things, he said: "Whether the United States as a sovereign and independent empire has a right to acquire territory is one question; but whether they can admit that territory into the Union upon an equal footing with the other States is a question of a very different nature. . . . Had I been asked anywhere but in this House whether a sovereign nation had a right to acquire new territory, I should have thought the question an absurd one. It appears to me too plain and undeniable to admit of demonstration. Is it necessary to resort to ancient authorities to establish a position which is proved by the conduct pursued by all nations from the earliest periods of the world and which arises from the very nature of society? Can it be doubted that when a State is attacked it has the right to assail its enemy in turn and weaken the aggressor by dispossessing him of a part of his territory? Surely the opinions of all writers both ancient and modern and the examples of all nations in all ages, can leave no reason to doubt on this subject. But, sir, on this as on most other occasions, we are told that the Constitution stares us in the face, and that this treaty cannot be carried into

effect without violating the Constitution. If, indeed, this sacred instrument forbids the acquisition of territory by the United States, I will most readily admit that we ought to stop here. Let the Constitution, however, be examined, let the principles on which it was formed be taken into view, and it will be found that instead of forbidding, the Constitution recognizes the authority to acquire territory. . . . The right to declare war is given to Congress; the right to make treaties, to the President and Senate. Conquest and purchase alone are the means by which nations acquire territory. The one can only be effected by war, the other by treaty, and when the States divested themselves of these powers and gave them to the general Government, they gave at the same time the right to acquire territory which they themselves originally had. The right must exist somewhere. It is essential to independent sovereignty. The tenth section of the first article of the Constitution expressly prohibits the States from entering into treaties or levying war and even from forming any compact or agreement with another State or a foreign Power without the consent of Congress. All the rights which the States originally enjoyed are either reserved to the States or are vested in the General Governmnt. If they once had the power individually to acquire territory and this is now prohibited to them by the Constitution, it follows of course that the power is vested in the United States. The gentleman from Connecticut (Mr. Griswold) admits that during the last session he was an advocate for very vigorous measures. By vigorous measures he means war. Will he deny that it was his wish to seize upon New Orleans by force? Will he deny that this and this alone was the reason why his friends and himself did not unite with us in the measures then adopted for the purpose of acquiring this country? If the gentleman's object was war, if his measure was conquest, did he mean that we should drive all the inhabitants of the island into the Gulf of Mexico and afterwards retire into our own limits? If he then thought that after conquering New Orleans we should have a right to hold it, surely it will not now be denied that we can hold it after having obtained it by peaceable measures. . . . Where one party violates an article in a treaty, the other has the right to declare the whole void, because the violation is a breach of faith and is a voluntary act. But where some of the stipulations of a treaty are impossible to be performed or cannot be fulfilled consistently with the engagements of an antecedent treaty with a third Power, these are of course void, but other

parts will stand good. . . . If it shall finally be determined that Congress cannot admit the ceded territory into the Union as a State, yet the other parts of the treaty with France will standgood. If this was the intention of our Ministers (which perhaps may be doubted), they seem to have guarded against the event of a refusal either by Congress or by the people. For it is declared expressly that until the inhabitants can be incorporated into the Union and can be admitted to all the privileges of citizenship, they shall be protected in the enjoyment of their civil and religious rights."

Messrs. Rodney of Delaware and Mitchill of New York spoke in favor of the resolution. The former said: "How are these people to be admitted? According to the principles of the Federal Constitution. Is it an open violation of any part of the Constitution. No; an express reservation is made by those who formed the treaty that they must be admitted under the Constitution. Now, if admitted agreeably to the Constitution it cannot be said to be in violation of it; and if not in violation of it the fears of gentlemen are groundless." Mr. Mitchill said: "We are constantly in the practice of receiving territory by cession from the red men of the West, the aborigines of our country. The very treaty mentioned in the President's message with the Kaskaskia Indians whereby we have acquired a large extent of land, would according to this doctrine be unconstitional; and so would all the treaties with the numerous tribes of the natives on our frontiers. . . . Suppose for a moment that our present limits were full of people, would it be unconstitutional to purchase additional territory for them to settle upon? Must the hive always contain its present numbers and no swarm ever go forth? . . . By the third article (of the treaty) it is stipulated that the inhabitants of Louisiana shall hereafter be made citizens; *ergo* they are not made citizens of the United States by mere operation of treaty. In confirmation of this construction, I will mention the second article of the Treaty of Amity, Commerce and Navigation between the United States and his Britannic Majesty concluded in 1794. It is therein stipulated that all British subjects who shall continue within the evacuated posts and precincts, should be considered if they remained there longer than one year to have abandoned all allegiance to the crown of Britain and to have made their election to become citizens of the United States; after which by taking the oath of allegiance they became instantly by act of treaty and by force of statute citizens of the United States. I therefore consider the point already adjudged, when

the treaty of 1794 was decided on, that without an act of Congress aliens can be converted into citizens by the provisions of a treaty duly ratified by the President and Senate. In the treaty respecting Louisiana there is happily no cause for alarm. This power of making citizens has not been exercised by the President and Senate, but a future day may be used by Congress. . . . By the treaty there is no preference given to one State over another in any commercial regulations. The port of New Orleans is not a part of any State in the Union. The abolition of the discriminating duties in favor of the two European nations is confined absolutely to the ports of Louisiana. They have no preference in the ports of any of the States. Nor is there given to one an advantage over the other. In right construction these indulgences are in fact a part of the purchase money; and on account of this valuable consideration, Congress will have less money to appropriate and the nation thereby be saved from several millions additional debt."

Mr. Randolph concluded the argument on the resolution with a concise and general summary of all the points advanced for and against the treaty. It had been shown, he contended, that every consideration of expediency demanded not only the adoption of the resolution but the acceptance of the treaty. But it must be admitted that the debate did not develop a specific right inherent in the constitution to admit a state into the Union from foreign territory acquired. On the other hand, the spirit of definite constitutional provisions clearly implied such a right. Therefore, the debate developed immensely preponderating advantages in favor of the treaty, with no specific constitutional prohibition against the admission of such a state. It should be said, however, that the latter point was not exhaustively discussed at this debate, because it was not properly embraced in the resolution under discussion.

The committee of the whole arose, the house proper resumed the consideration of business, and the chairman of the committee reported the following resolutions:*

"*Resolved,* That provisions ought to be made for carrying into effect the treaty and conventions concluded at Paris on the thirtieth of April, one thousand eight hundred and three, between the United States of America and the French Republic.

"*Resolved,* That so much of the Message of the President of the twenty first instant, as relates to the establishment of a Pro-

* Annals of Congress.

visional Government over the territory acquired by the United States, in virtue of the treaty and conventions lately negotiated with the French Republic, be referred to a select committee; and that they report by bill or otherwise.

"*Resolved*, That so much of the aforesaid conventions as relates to the payment by the United States of sixty millions of francs to the French Republic and to the payment by the United States of debts due by France to citizens of the United States, be referred to the committee of Ways and Means."

The first resolution was carried by yeas 90, nays 25. The second was amended by an insertion of the words "occupation and" before the word "establishment," and was then agreed to. The third was adopted. These acts of the house may be construed as a full acceptance of the cession of Louisiana on the terms stipulated in the treaty, and subsequent debates were merely intended to clear up the details of right and procedure.

On October 27, the house in committee of the whole considered the senate bill to enable the president to take possession of the territory ceded by France to the United States April 30, 1803, and for other purposes (see the bill supra). Mr. Griswold of Connecticut moved to strike out the whole second section, and explained that he made the motion in order "to obtain an explanation respecting the nature and extent of the delegated power." This led to a spirited discussion, in which many members joined, of the power thus to be delegated to the president, several contending that the section was unconstitutional and others that it was not. The motion to strike out was defeated by ayes 30. In order to cure faults which the majority party themselves considered might be justly held against the bill, Mr. Randolph moved an amendment to the second section by adding at the close the words, "for maintaining and protecting the inhabitants of Louisiana in the full enjoyment of their liberty, property and religion." As this limited the powers delegated to the president, it was agreed to without division. On the 28th the bill came back from the senate where the house amendments had been accepted, and was voted upon with the result of 89 yeas and 23 nays. This made it a law so far as congress was concerned, one of the most important ever passed by the law-making branch of the government. It cannot be doubted, when the congressional debate is carefully read and analyzed, that the bill met the approval of almost every member of congress, even of those who, during the discussion, urged strong objections to the methods proposed for accepting the treaty. Nearly all at heart were willing to take

the remote chances of infringing the constitution in order to settle permanently the Mississippi question and to secure the splendid domain beyond that river.

The bill for carrying into effect the convention of April 30, 1803, between the United States and France passed the house—yeas 85, nays 7. This bill was amended by the senate, but the amendments were agreed to by the house on November 7. The act providing for the payment of the claims of American citizens against France was approved by congress November 12. Two other acts, one allowing drawbacks of duties on goods exported to New Orleans, and another laying and collecting duties on imports and tonnage within Louisiana, were passed at this session of congress. It may be proper to add at this point that the total cost to the United States of the Louisiana purchase up to June 30, 1880, including principal, interest, claims, debts, etc., reached the grand aggregate of twenty-seven million two hundred and sixty-seven thousand six hundred and twenty-one dollars and ninety-eight cents.

CHAPTER VII

The Florida and the Texas Boundaries, 1803-1808

WHEN the United States commissioners received from the French commissioner, Peter Clement Laussat, the province of Louisiana on December 20, 1803, they were under orders to refrain from laying any claim to West Florida.* It had been learned that at the time the province was transferred by Spain to France a few weeks before, nothing denoting the limits or the boundaries transpired. The French authorities were not ordered, when they thus secured Louisiana from Spain, to claim any portion of the Floridas. M. Laussat, who had been the French commissioner to receive the province from Spain and later to transfer it to the United States, stated positively that no part of the Floridas was included within the eastern boundary and that although France had strenuously insisted on an extension of Louisiana to the Mobile river, their demands were peremptorily refused by Spain. After the treaty of San Ildefonso the consular government had used every argument within their power to stretch the eastern boundary of the province to the Perdido, but Spain had persistently refused to concede the claim, largely through the influence of the acute Godoy. Had France possessed the least claim to an eastward extension beyond the Iberville, the first consul, when he secured the retrocession of Louisiana in 1800 and when he so intensely desired the acquisition of the Floridas, would scarcely have failed to get part at least of West Florida, having as he did such influence and prestige with the Spanish court. Being unable to show a right to such a claim,

*American State Papers.

though having the promise of the Spanish monarch to retrocede Louisiana, he was forced to be content with the eastern limits at the river Iberville. Had he kept Louisiana, he undoubtedly would have brought pressure enough to bear later on the Spanish government to secure West Florida at least, by purchase or other equivalent. The inability of France to show a just claim to territory east of the Iberville and the positive stand of the Spanish that Louisiana extended no farther eastward, were the principal circumstance which induced the United States to forego for a while laying any claim to a portion of West Florida. They realized the immediate importance of gaining possession of Louisiana before anything should transpire to prevent the accession, and trusted to negotiation afterward to effect the relinquishment of West Florida by Spain. Many of the brightest, clearest-sighted and most honorable of the American statesmen believed the United States possessed a valid claim to the territory eastward to the Perdido. The citizens generally desired very much to possess the Floridas; and accordingly, the transfer of Louisiana to the United States had no sooner been effected than the Americans in the vicinity of New Orleans and Natchez began openly to claim the country to the Perdido. In a short time these claims became so annoying to the Spanish at New Orleans, that the following communications passed between the commissioners of France and Spain still in that city:

"New Orleans, March 31, 1804."

"To the Colonial Prefect and Commissioner of the French Republic:

"Sir: I should be guilty of a great dereliction from my duty and from the necessities imposed by the confidence of the King my master when he gave me my commission, if, while you are preparing for your voyage, and terminating the operations in which I was also destined to bear a part, I should neglect to communicate to you, in the name of the King, that Spain cannot with indifference regard the exorbitant propositions which the United States are beginning to set forth, with regard to the limits, both to the east and the west, of the province of Louisiana. The limits on the east are established by solemn treaties, and for that very reason are absolutely unquestionable; it however appears that France herself is supporting the establishment of those on the west at the mouth of the river Bravo (Rio Grande). I cannot, therefore, refrain from entering my most solemn protest against any operations or intentions of establishing the limits beyond the

river Sabine, until his Majesty shall have resolved upon some measure with regard to the subject; as such a proceeding would be prejudicial to the interests of Spain, and would tend to dismember a considerable portion of the internal provinces of Mexico to the great damage of the dominions of his Majesty and of his subjects. And in order that this may forever be public, I beseech you, sir, to inform your government of it, in order that the limits may be settled truly, which now appears undetermined, and the operations of tracing them may be begun upon the bases already acknowledged by France when she formally possessed the province of Louisiana."

"May God preserve you many years,

"THE MARQUIS DE CASA CALVO."*

"New Orleans, 12 of Germinal, Year 12.
(2d of April, 1804).

"To the Marquis de Casa Calvo,
"Brigadier of the Armies of Spain,
"and Commissioner of his Catholic Majesty:

"Sir: I will faithfully submit to my government the declaration in the form of a protest, which you placed in my hands by your letter of the 10th of Germinal of the present year (March 31, 1804), respecting the limits which should be established for Louisiana, according to the treaty of restoration and of cession, in execution of which I here represent the French people, by commission from the First Consul. I have the honor to salute you, sir, with the greatest consideration."

"LAUSSAT."

At the time of the transfer of Louisiana to the United States, the French commissioner, M. Laussat, while positive that the eastern boundary did not extend beyond the river Iberville, was equally positive that the southwestern boundary did extend to the Rio Bravo or Del Norte. Mr. Livingston, in his letter dated May 20, 1803, states that at first he thought that the Floridas extended westward to the river Iberville. "The moment I saw the words of the treaty of Madrid I had no doubt but it included all the country that France possessed by the name of Louisiana previous to their cession to Spain, except what had been conveyed by subsequent treaties. I accordingly insisted with M. Marbois at the time we negotiated that this would be con-

* American State Papers.

sidered as within our purchase. He neither assented nor denied, but said that all they received from Spain was intended to be conveyed to us. That my construction was right is fairly to be inferred from the words of the treaties, and from a comment upon them contained in the Spanish minister's letter to Mr. Pinckney, in which he expressly says that France had recovered Louisiana as it formerly belonged to her, saving the rights of other Powers. This leaves no doubt upon the subject of the intention of the contracting parties. Now, it is well known that Louisiana as possessed by France was bounded by the river Perdido and that Mobile was the metropolis. For the facts relative to this I refer you to Raynal and to his maps. I have also seen maps here which put the matter out of dispute. I called this morning upon M. Marbois for a further explanation on this subject, and to remind him of his having told me that Mobile made a part of the cession. He told me that he had no precise idea on the subject, but that he knew it to be an historical fact, and that on that only he had formed his opinion. I asked him what orders had been given to the Prefect who was to take possession, or what orders had been given by Spain as to the boundary in ceding it? He assured me that he did not know; but that he would make the inquiry and let me know. At four o'clock I called for Mr. Monroe to take him to the minister of foreign affairs, but he was prevented from accompanying me. I asked the minister what were the east bounds of the territory ceded to us? He said he did not know; we must take it as they had received it. I asked him how Spain meant to give them possession? He said, according to the words of the treaty. But what did you mean to take? I do not know. Then you mean that we shall construe it our own way? I can give you no direction; you have made a noble bargain for yourselves, and I suppose you will make the most of it."

As soon as the province had been turned over to the American commissioners, the troops under General Wilkinson were placed in the redoubts surrounding the city for want of better quarters. This was a severe hardship, of which he entered strenuous complaint. On January 16, 1804, he wrote, "We did not until this day receive the orders of the French and Spanish commissioners for the delivery of the posts in Upper Louisiana." As late as March, 1804, he reported that the Spanish troops were still in New Orleans, in possession of the magazine and storehouses, while the American troops were required to pay for their accommodations. He reported that his patience was nearly exhausted.

Late in March a detail of Spanish guards was mounted in New Orleans, of which General Wilkinson said, "but you must not believe that this singular spectacle is permitted by my consent." On the 25th of April he wrote, "I have the satisfaction to inform you that about three hundred Spanish troops embarked for Pensacola on the 8th instant, but I am informed that twelve or fifteen officers and between sixty and one hundred men will continue in this city. They have delivered up the barracks, but occupy the hospital and several detached buildings. The Prefect made his congé (farewell) to our commissioners on the 12th instant, but is still in town exercising his prefectorial and commissarial functions." On April 25th he wrote: "The Prefect of France embarked on the 21st instant. Yesterday the commissioners of the United States took leave of the commissioners of Spain and I numbered twenty-five Spanish officers at the audience. On July 14 he wrote that the powder magazine had been delivered to him. On October 30th Governor Claiborne notified the secretary of war that six hundred Spanish troops had arrived at Pensacola; that Mobile and Baton Rouge were to be strengthened; that a Spanish brigadier-general had arrived at San Antonio, and a fort had been erected on Trinity river.

The Spanish troops not having left New Orleans by August, 1805, Governor Claiborne complained to the secretary of state and said: "You no doubt will be surprised to find so many foreign officers in this city; the fact is, sir, they are wedded to Louisiana and necessity alone will induce them to depart. I have repeatedly by letter and verbally informed the Marquis (Casa Calvo) that the continuance in this territory of so many Spanish officers so long beyond the right occasion for it, was not seen with approbation, and urged their departure. The Marquis has as often assured me of his disposition to comply with my wishes." Late in August, 1805, it was reported in New Orleans that Louisiana had been transferred by the United States to Spain. The Marquis Casa Calvo told Governor Claiborne, in answer to questions of the latter, that the Spanish minister of state had communicated to him the failure of the negotiations of Messrs. Monroe and Pinckney at Madrid and had stated that the desire of the court of Spain was to make "the Mississippi river the boundary, and in time it was expected that that object would be attained."* By this was meant that

* This statement should be borne in mind.

Spain expected ultimately to secure Louisiana in return for the cession of the Floridas to the United States. Governor Claiborne said, "The prospect of a retrocession of the west bank of the Mississippi now is and has always been the theme of the Spanish officers who remain in this territory, and many citizens seem to view it as an event likely to happen—an impression which I greatly regret, since it tends to lessen their confidence in the American Government and to cherish a Spanish party among us. I most desire to see every Spanish officer removed from the ceded territory. There certainly must be a power somewhere vested to cause to be executed the clause in the treaty which directs 'the Spanish forces to be withdrawn (within three months) from the ceded territory,' and I should indeed be pleased to have it hinted to me that in my character as commissioned or Governor, I could on this occasion take (if necessary) compulsory measures."

Governor Claiborne wrote on October 24: "I have certain information of the arrival at Pensacola of four hundred troops from Havana and that a much larger number is daily expected. I also learn from a source entitled to credit that three hundred men are ordered from Pensacola to Baton Rouge, and that eight hundred Spanish troops have lately been posted on the frontier of the province of Texas. It is a fact known to me that a Spanish agent has contracted with a merchant of this city for the delivery at the town of Mobile of four thousand barrels of flour, and that this same agent not being able to effect a contract for the delivery of four thousand pair of shoes at Mobile has purchased a quantity of leather. . . . It is my intention to require of Governor Folch an explanation of the object of these military movements. . . . I am inclined to think that the Spanish agents calculate on a speedy rupture and are making all the preparations which their means permit to commence the war in this quarter to advantage. New Orleans would unquestionably be the first object of attack, and with a view to its security I should be pleased to see Fort St. John repaired and put in a state of defense; that fort commands the mouth of the Bayou St. John, and if strengthened would present a great impediment to the passage of troops from Pensacola and Mobile by the way of the lakes to this city."*

The strengthening at this time of all the Spanish ports along the Gulf and the delay of the Spanish troops to evacuate the

* American State Papers.

posts of the ceded territory, were due to the fact that the inhabitants there did not believe that the cession would be carried into effect, and did believe that the province would be retroceded to Spain.* Therefore, the warlike proceedings of the Spanish authorities in Havana, Louisiana and the Floridas were in anticipation of such retrocession, and were probably not in obedience to orders from the Spanish court. No doubt the probable eventuality of serious trouble with the United States had something to do in causing these military preparations. As a matter of fact, the attitude of the United States in claiming West Florida in face of the declaration of both France and Spain that it was not included in the cession of Louisiana, was regarded by the latter as an act of hostility——as an intention to occupy and hold that province. In this view Spain was only partly right. While many believed that Louisiana extended to the Perdido, no forcible occupation of the province would have resulted from the refusal of Spain to accede to the idea. The United States would have paid Spain for its possession. But had any other country attempted to wrest it from Spain, the United States would not have hesitated to occupy it, and afterward would have settled with Spain for the invasion.

It was unquestionably the design of the Spanish government to secure from the United States the cession of all the country west of the Mississippi and probably the island of New Orleans in addition (because the latter had always been considered as a part of the territory to the westward) as a consideration for the cession by Spain of the two Floridas. This fact is shown in the statements of the Marquis de Casa Calvo and Pedro Cervallos, the Spanish prime minister, and is further evidenced by the claims of the Spanish envoy in subsequent negotiations. It was to the interest, therefore, of the Spanish pretensions that the Floridas should be made to seem as valuable as possible, and to be owned wholly and exclusively by Spain. On the other hand, the American statesmen, although they made strong arguments and presented demands of great breadth and amplitude, were at all times doubtful of the righteousness of their claims to the Perdido, but not of their claims to territory beyond the Sabine. The chances are that had the United States relinquished all claim to West Florida, a much greater extension to the westward would have been secured. France would probably have supported the United States in this contention, and

* History of Louisiana, Martin.

thus rendered the acquisition easier. As it was, France, not having been able to convince Spain that West Florida was embraced in the treaty of St. Ildefonso, could not in turn be induced to admit that the cession to the United States embraced the country eastward to the Perdido. But the United States wanted the Floridas at that time far more than it wanted the country west of the Sabine; and therefore, in subsequent negotiations the policy of the government as to Texas was yielding, but as to the Floridas was obstinate as death. In pursuit of the Floridas, congress, early in 1804, having extended the revenue district of the United States over Mobile, the president issued the following proclamation:

"Whereas, by an act of Congress, authority has been given to the President of the United States, whenever he shall deem it expedient, to erect the shores, waters and inlets of the bay and river of Mobile and of the other rivers, creeks, inlets and bays emptying into the Gulf of Mexico east of said river Mobile and west thereof to the Pascaguola inclusive, into a separate district for the collection of duties on imposts and tonnage, and to establish such place within the same as he shall deem expedient to be the port of entry and delivery for such district; and to designate such other places within the same district not exceeding two to be port of delivery only:

"*Now know ye*, That I, Thomas Jefferson, President of the United States, do hereby decide that all the above mentioned shores, waters, inlets, creeks and rivers, lying *within the boundaries of the United States*, shall constitute and form a separate district to be denominated 'the district of Mobile', and do also designate Fort Stoddert within the district aforesaid to be the port of entry and delivery for the said district."†

The language used in the act of congress which extended the revenue district over the bay and town of Mobile was as follows: "That from and after the first day of August next (1804), the town of Mobile shall be, and the same is hereby established the sole port of entry for the district, including the shores, waters and inlets of the bay and river Mobile, and of the other rivers, creeks, inlets and bays emptying into the Gulf of Mexico east of the said river Mobile and west thereof to the eastern boundary of the State of Louisiana."*

The Spanish ambassador, Marquis de Casa Yrujo, on October 13, 1804, presented the following request to the secretary

† Messages and Papers of the Presidents.
* Annals of Congress.

of state: "The Government of the United States will suppress or modify, as I proposed to you in one of my letters in the month of March past, the eleventh section of the act of Congress of the 24th of February last, . . . or if it should be more agreeable to this government, it will declare to me in writing through you, that by the said eleventh section of the beforementioned act, it had not intended to offer an insult to His Catholic Majesty, nor any aggression upon the rights of his sovereignty, and that the Executive, as the true interpreter of the said law, shall declare that the object or intention of what is contained in the said section is and ought to be only applicable to the territory of the United States, and not to the country belonging to and in the actual possession of His Catholic Majesty; it being well understood that until the commission destined to the demarcation of limits shall have decided by common consent that the territory claimed by the United States did not belong to His Majesty but to the said States, they nor the President authorizing them shall make no change in it nor publish laws nor establish custom-houses nor any other species of regulations in said territory; but on the contrary that they shall leave things *in statu quo*, as they were before the resolution of Congress complained of. Moreover, there shall be given the corresponding notoriety to this act of ratification on the part of the United States in a mode that without in any manner compromising its dignity may prove that satisfactory explanations were given on this point to His Catholic Majesty."*

At this remarkable request Mr. Madison expressed much surprise and said: "I am now charged to enclose to his (the King of Spain) information the executive act of the President, founded on and of a nature equally public with the act of Congress aforesaid, by which it will be seen that in expounding and applying the latter there is the most exact conformity to the assurance given in the letter of March the 19th, that the operation of the eleventh section would take place within the acknowledged limits of the United States and would not be extended beyond them, until it should be rendered expedient by friendly elucidation and adjustments with the Spanish Government. In order to hasten those, a special mission to Madrid was some time since provided for; and if the destined minister extraordinary has not already repaired thither, the instructions which will now be repeated, if no unfavorable considerations present themselves,

* American State Papers.

may be expected soon to have that effect. In the meantime, the President concurs with the Spanish Government in the expediency of leaving things *in statu quo*. And he persuades himself that it will be deemed equally expedient on both sides to give to this precaution its full effect by a mutual forbearance to increase unnecessarily either within or on the borders of territories the limits of which remain to be adjusted, military provisions of any kind, which by exciting jealousies on one side or the other, may have tendencies equally disagreeable to both."

When the news was received in Spain that congress had passed the act extending the revenue district of the United States over the bay of Mobile, the Spanish minister of state asked for a copy of such act and requested an explanation from the American ambassador. Mr. Pinckney replied, June 1, that he had not himself yet received a copy of the act, and that in regard to the cession he had informed the Spanish government as soon as he received the news of the transfer of Louisiana that the American envoys at Paris had informed him "that they considered a great part of West Florida, so called by the English, as included. Such letter could not have been written to me officially by them without their having been so informed by the French plenipotentiary and Government. The price paid is a proof of the territory being considered as extremely extensive." But the Spanish minister emphatically requested the "revocation of the part of the act of the Congress of the said States, approved on the 24th February last, which has manifestly violated the rights of the sovereignty of His Majesty, by empowering the President to exercise authority and establishing custom-houses within a territory which belongs to the crown of Spain. His Majesty being, as he is, persuaded that through a mistake only could there have been introduced into the said act the expressions which assail the rights of his sovereignty, does not doubt that the United States will give in relation to said act those explanations which may be most conformable to the justice he claims and the most conciliating and respectful to the rights of his crown." This was one of three indispensable conditions required by the Spanish government, so stated Mr. Cervallos, before the treaty to indemnify American citizens for losses from Spanish privateers could be concluded.

This letter in the nature of an ultimatum, in which it was deemed unjustifiable demands were made upon the United States, brought forth the following sharp reply from Mr. Pinckney: "I wish your Excellency to say whether I am to understand your

letter in this sense: That if the second condition which respects the suppression of the claims for French spoliations within the Spanish territory, and the third, the repeal of the law passed by Congress in February, are not agreed to, His Majesty will not ratify the convention (of August 11, 1802), . . . I wish to have your excellency's answer as quickly as possible, as on Thursday I send a courier with circular letters to all our consuls in the ports of Spain stating to them the critical situation of things between Spain and the United States, the probability of a speedy and serious misunderstanding, and directing them to give notice thereof to all our citizens, advising them so to arrange and prepare their affairs as to be able to move off within the time limited by the treaty, should things end as I now expect. I am also preparing the same information for the commander of our squadron in the Mediterranean for his own notice and government and that of all the American merchant vessels he may meet. I confess after the style of your excellency's letter of the 31st of May on the subject of the late law of Congress and the manner in which you annex to the ratification of a convention you yourself had signed, the humiliating conditions of our Government's previously suppressing a claim of great magnitude and which they consider as a point of national honor, and also of repealing an act lately passed with all the deliberation and solemnities prescribed by our constitution, I see little hope of an amicable accommodation; particularly when I tell you that in my last two despatches lately received I am charged by my Government to repeat to your excellency that not one shilling of the property claimed by the citizens of the United States from Spain for French spoliations within the ports and territories or on the coasts of Spain, has ever been relinquished to or paid or provided for by France in any mode or even claimed from her."*

But the Spanish minister sent a mollifying answer, saying among other things "when I presented to you the motives there were for desiring to add in the ratification two or three circumstances which do not alter the substance of the convention (of August 11, 1802,) nor take anything from its object, it is not possible to comprehend the motive for your breaking out in the decisions, not to say threats, contained in your said letter, nor why you should proceed as you say you will to instruct the consuls and commandants of the vessels of your nation to give notice

* Diplomatic Correspondence.

of the critical situation of affairs between Spain and the United States, with an anticipation certainly not called for by the spirit of conciliation which you say animates you. . . . The second condition which you consider indecorous and humiliating for the United States, appears to me to be quite the contrary. His Majesty is persuaded that the intention of Congress has not been to usurp the rights of his sovereignty. He has not nor does he demand the revocation of the act, nor of its provisions, which relate to the internal regulation of the country, but a satisfactory explanation of the clauses of the eleventh section, which impinge the rights of the crown of Spain." He ended the letter by stating that inasmuch as Mr. Pinckney had determined to terminate "every ulterior explanation relative to the convention, and not being able to persuade himself (the King) that the Government of the United States has authorized the part which you have thought proper to take, has resolved to despatch an extraordinary courier to the United States and by this means to make that Government acquainted with the state of the negotiations."

This reply left Mr. Pinckney no option but to return to the United States as he had threatened; this he did, but before going he prepared a long communication to the Spanish government justifying himself and explaining the reasons for his course. His principal reason for insisting on a settlement of the American claims, was owing to the apparent intention of the court of Spain to postpone them or to make it appear, unjustifiably, that they had already been paid by France under the conventions of the 30th of April, 1803, at the same time and under the same conditions that the American individual claims against France were paid. He also strongly objected to the language used in the minister's (Cervallos's) letter of May 31st, and said, "In this letter you plainly call the act of Congress of which you speak an outrage and an insult to His Majesty's sovereignty, endeavoring to smooth it over by saying you hoped the President and Congress were not aware of what they did, adding thereby the reproach of precipitancy as well as ignorance of their rights an duties; and concluding with saying in very direct terms that such a law lessens their good name--language that a monarch may hold to his vassels, or a country to one which she has humbled, but which to the unbroken spirit of the United States will not certainly be very pleasing." But there is no doubt that Mr. Pinckney was too hasty and precipitate, although, to be sure, the annoying delays were extremely irritating and humiliating.

By act approved February 26, 1803, congress enacted "that a

sum of $2,000,000 in addition to the provision heretofore made, be and the same is hereby appropriated for the purpose of defraying any extraordinary expense which may be incurred in the intercourse between the United States and foreign nations, to be paid out of any money in the treasury not otherwise appropriated, and to be applied under the direction of the President of the United States, who shall cause an account of the expenditure thereof to be laid before Congress as soon as may be." The president was authorized to borrow this sum. While the language of this act was general, it was well understood that the amount was to be employed in securing the cession of the Floridas. Indeed there seems to be no doubt that the envoys at Paris were afterward authorized to use as high as ten million dollars to secure the Floridas from France should the latter maintain that they were included in the treaty of St. Ildefonso. Otherwise they were authorized to employ that sum as a maximum to induce Spain to cede them to the United States. At this time the report was circulated in Paris that M. Talleyrand had been offered a large sum in the nature of a bribe to be paid him in the event of his success in assisting the United States to obtain the cession of the two Floridas. There is no doubt that owing to this report, he lost caste with Napoleon.

Messrs. Livingston and Monroe wrote under date of June 7, 1803, "We are happy to have it in our power to assure you that on a thorough examination of the subject, we consider it uncontrovertible that West Florida is comprised in the cession of Louisiana. West Florida was a part of Louisiana when it was in the hands of France and it was not in her hands in any other situation. The transfer of the whole was on the same day, the 3d of November, 1762, that being the day of the secret convention between France and Spain, and of the preliminary articles of the treaty of the 10th of February, 1763, between those Powers and Great Britain. The treaty of 1783 between Britain and Spain by which the Floridas were ceded to the latter, put Louisiana in her hands in the same state it was in the hands of France; and the remaining or third member of the article in the treaty of St. Ildefonso between France and Spain, under which we claim, by referring to that of 1783 (as to that between Spain and the United States of 1795), and of course in the above character, only tends to confirm this doctrine. We consider ourselves so strongly founded in this conclusion, that we are of opinion the United States should act on it in all the measures relative to Louisiana in the same manner as if West Florida was comprised within the

island of New Orleans; or lay to the west of the river Iberville and to the lakes through which its waters pass to the ocean. Hence the acquisition becomes of proportionably greater value to the United States."

In the instructions of the United States July 29, 1803, to Mr. Monroe, minister extraordinary to the court of Spain, it was stated that "It is thought proper to observe to you that although Louisiana may in some respects be more important that the Floridas and has more than exhausted the funds allotted for the purchase of the latter, the acquisition of the Floridas is still to be pursued, especially as the crisis must be favorable to it. . . . Should no bargain be made on the subject of the Floridas, our claims of every sort are to be kept in force. If it be impossible to bring Spain to a cession of the whole of the two Floridas, a trial is to be made for obtaining either or any important part of either. The part of West Florida adjoining the territories now ours and including the principal rivers falling into the gulf, will be particularly important and convenient. It is not improbable that Spain in treating on a cession of the Floridas, may propose an exchange of them for Louisiana beyond the Mississippi, or may make a serious point of some particular boundary to that territory. Such an exchange is inadmissible. . . . We are the less disposed also to make sacrifices to obtain the Floridas, because their position and the manifest course of events guaranty an early and reasonable acquisition of them. . . . Perhaps the intercommunications with the Spanish Government on this subject with other opportunities at Madrid, may enable you to collect useful information and proofs of the fixed limits or of the want of fixed limits to Western Louisiana. Your inquiries may also be directed to the question, whether any and how much of what passes for West Florida be fairly included in the territory ceded to us by France."

Mr. Madison wrote to Mr. Livingston at Paris on July 29, 1803, "The boundaries of Louisiana seem to be so imperfectly understood and are of so much importance, that the President wishes them to be investigated whenever information is likely to be obtained. You will be pleased to attend particularly to this object as it relates to the Spanish possessions both on the west and on the east side of the Mississippi. The proofs countenancing our claim to a part of West Florida, may be of immediate use in the negotiations which are to take place at Madrid." He likewise wrote on October 6, "The rightful limits of Louisiana are under investigation. It seems undeniable from the present state

of the evidence, that it extends eastwardly as far at least as the river Perdido; and there is little doubt that we shall make good both a western and a northern extent highly satisfactory to us."

In the letter dated July 29, 1803, Mr. Madison communicated to Mr. Pinckney at Madrid that "the Floridas are not included in the treaty (ceding Louisiana to the United States), being it appears still held by Spain. . . . As the indemnifications claimed from Spain are to be incorporated in the overtures for the Floridas, it will be advisable to leave them, although within your ordinary functions, for the joint negotiations of yourself and Mr. Monroe." The position taken by both France and Spain that the Louisiana ceded to the United States extended no farther eastward than the Iberville, wholly disarmed at first the claim afterward made by the United States to the Perdido. Mr. Madison himself, who afterward became the champion of the extension, did not at first pretend to claim eastward of the Iberville; but even while instructing the envoys to Spain to secure the cession of both of the Floridas, he suggested in the same letters that it would be advisable for them to examine whether the United States had any right to a portion of West Florida. A little later he made the strongest argument of any American for the extension. But he weakened his case very greatly at the start by not promptly claiming West Florida, for his instructions to the envoys show that the latter approached both Spain and France in an attitude of supplication to secure the cession of the two Floridas, thus conveying the inference that they did not claim the ownership of either, but were there for the purpose of purchasing one or both of them. Admissions to this effect were made by Mr. Monroe to the French court, and of course promptly communicated to Madrid by the latter. But Mr. Monroe was not to blame for this course, because he was simply following the instructions of the state department.

In the instructions given April 15, 1804, by the department of state to the envoys at Madrid, it was required that they should secure an acknowledgment and confirmation "to the United States the cession of Louisiana in an extent eastwardly to the river Perdido," and the cession of "all the territory remaining to her (Spain) between the Mississippi, the Atlantic and the Gulf of Mexico, together with all the islands annexed thereto, either whilst the Floridas belonged to Great Britain or after they became provinces of Spain. Or if the article be unattainable in that form, Spain shall cede to the United States forever all the territory, with the islands belonging thereto, which remain to her between

the Mississippi, the Atlantic and the Gulf of Mexico; and the envoys were authorized to pay a maximum of ten million dollars therefor." It was explained that the first article was preferable because it recognized the right of the United States to the territory between the Mississippi and the Perdido, which right was deemed to be well founded. But principally was it preferable "because it is known that a great proportion of the most valuable lands between the Mississippi and the Perdido have been granted by Spanish officers since the cession was made by Spain (to France). These illicit speculations cannot otherwise be frustrated than by considering the territory as included in the cession made by Spain and thereby making void all Spanish grants of subsequent date. It is represented that these grants have been extended, not only to citizens of the United States, but to others whose interest now lies in supporting the claim of Spain to that part of Louisiana, in opposition to that of the United States. It is conjectured that M. Laussat himself has entered into these speculations, and that he felt their influence in the declaration made confidently to our commissioners at New Orleans that no part of West Florida was included in Louisiana." They were also instructed, in order to quiet Spain and give her no present cause of complaint, to exclude wholly from settlement for a term of years by the inhabitants of both Spain and the United States, the territory with the following limits: "By a limits consisting on one side of the river Sabine or Mexicano from the sea to its source; thence a straight line to the confluence of the rivers Osages and Missouri; and by a limit on the other side consisting of the river Colorado (or some other river emptying into the bay of St Bernard), from its mouth to its source; thence a straight line to the most southwestwardly source of the Red river, with such deflections however as will head all the waters of that river; thence along the ridge of the highlands which divide the waters belonging to the Missouri and the Mississippi from those belonging to the Rio Bravo to the latitude of the northernmost source of that river; and thence a meridian to the northern boundary of Louisiana." Reasonable inducements were to be offered to inhabitants already within those limits to remove therefrom, whether of Spain or of the United States. The inhabitants of both countries were left free to mingle with the Indian tribes within the limits. Certain garrisons were to be erected and maintained therein in order to hold the Indians in subjection. After a term of years to be agreed upon the true boundary of western Louisiana was to be determined by a joint commission or convention. But it was

stipulated that "if Spain should inflexibly refuse to cede the territory eastward of the Perdido no money is to be stipulated. If she should refuse also to relinquish the territory westward of that river, no arrangement is to be made with respect to the territory westward of the Mississippi; and you will limit your negotiations to the claim of redress for the cases of spoliation above described. If Spain should yield on the subject of the territory westward of the Perdido, and particularly if a comprehensive provision for the claims should be combined therewith, you may admit an arrangement westward of the Mississippi on the principle of that proposed, with modifications however, if attainable, varying the degree of concession on the part of the United States according to the degree in which Spain may concur in a satisfactory provision for the cases of the territory westward of the Perdido and of the claims of indemnification. The United States having sustained a very extensive though indefinite loss by the unlawful suspension of their right of deposite at New Orleans, and the Spanish Government having admitted the injury by restoring the deposite, it will be fair to avail yourself of this claim in your negotiations, and to let Spain understand that if no accommodation should result from them it will remain in force against her. . . . No final cession is to be made to Spain of any part of the territory on this side of the Rio Bravo, but in the event of a cession to the United States of the territory east of the Perdido, and in that event in case of absolute necessity only and to an extent that will not deprive the United States of any of the waters running into the Missouri of the Mississippi or of the other waters emptying into the Gulf of Mexico between the Mississippi and the river Colorado emptying into the Bay of St. Bernard." As will be seen from the above, the envoys were told to modify their claims on the Texas border in the same proportion as Spain should grant the requirements of the United States between the Mississippi and the Perdido.

Inasmuch as both France and Spain agreed that the Louisiana retroceded to France and thence ceded to the United States did not extend eastward of the Mississippi and the Iberville, only the posts west of that line were turned over to France first and then to the United States. Mr. Madison said, "With respect to the posts in West Florida, orders for the delivery were neither offered to, nor demanded by, our commissioners. No instructions have, in fact, been ever given then to make the demand. This silence on the part of the Executive was deemed eligible: First, because it was foreseen that the demand would not only be

rejected by the Spanish authority of New Orleans, which had in an official publication, limited the cession westwardly by the Mississippi and the island of New Orleans, but it was apprehended as has turned out that the French commissioner might not be ready to support the demand, and might even be disposed to second the Spanish opposition to it: Second, because in the latter of these three cases a serious check would be given to our title, and in either of them a premature dilemma would result between an overt submission to the refusal and a resort to force: Third, because mere silence would be no bar to a plea at any time that a delivery of a part, particularly of the seat of Government, was a virtual delivery of the whole: whilst in the meantime we could ascertain the views and claim the interposition of the French Government and avail ourselves of that and any other favorable circumstances for effecting an amicable adjustment of the question with the Government of Spain. In this state of things it was deemed proper by Congress, in making the regulations necessary for the collection of revenue in the ceded territory and guarding against the new danger of smuggling into the United States through the channels opened by it, to include a provision for the case of West Florida by vesting in the President a power which his discretion might accommodate to events. This provision is contained in the act which has been pending in Congress for many weeks." He further states that when the act became known to the Spanish ambassador he became very angry, but was answered with the declaration that "we considered all of West Florida westward of the Perdido as clearly ours by the treaty of April 30, 1803, and that of St Ildefonso. . . . The territory ceded to the United States is described in the words following: 'The colony or province of Louisiana, with the same extent that it now has in the hands of Spain, that it had when France possessed it, and such as it ought to be, according to the treaties subsequently passed between Spain and other States.' In expounding this three-fold description, the different forms used must be so understood as to give a meaning to each description, and to make the meaning of each coincide with that of the others.

"The first form of description is a reference to the extent which Louisiana *now* has in the hands of Spain. What is that extent as determined by its eastern limits? It is not denied that the Perdido was *once* the eastern limit of Louisiana. It is not denied that the territory now possessed by Spain extends to the river Perdido. The river Perdido, we say then, is the limit to the eastern extent of Louisiana ceded to the United States. This

construction gives an obvious and pertinent meaning to the term 'now' and to the expression 'in the hands of Spain,' which can be found in no other construction. For a considerable time previous to the treaty of peace in 1783 between Great Britain and Spain, Louisiana as in the hands of Spain was limited eastwardly by the Mississippi, the Iberville, etc. The term 'now' fixes its extent as enlarged by that treaty, in contradistinction to the more limited extent in which Spain held it prior to that treaty. Again, the expression 'in the hands of Spain' fixes the same extent; because the expression cannot relate to the extent which Spain by her internal regulations may have given to a particular district under the name of Louisiana; but evidently to the extent in which it was known to other nations, particularly to the nation in treaty with her, and in which it was relatively to other nations in her hands and not in the hands of any other nation. It would be absurd to consider the expression 'in the hands of Spain' as relating not to others, but to herself and to her own regulations; for the territory of Louisiana in her hands must be equally so and be the same whether formed into one or twenty districts, or by whatever name or names it may be called by herself.

"The next form of description refers to the extent which Louisiana had when possessed by France. What is this extent? It will be admitted that for the whole period prior to the division of Louisiana between Spain and Great Britain in 1762-3, or at least from the adjustment of boundary between France and Spain in 1719 to that event, Louisiana extended in the possession of France to the river Perdido. Had the meaning then of the first description been less determinate and had France been in possession of Louisiana at any time with less extent than to the Perdido, a reference to this primitive and long continued extent would be more natural and probable than to any other. But it happens that France never possessed Louisiana with less extent than to the Perdido; because on the same day that she ceded a part to Spain, the residue was ceded to Great Britain; and consequently as long as she possessed Louisiana at all she possessed it entire, that is in its extent to the Perdido.

"The third and last description of Louisiana may be considered as auxiliary to the two others and is conclusive as an argument for comprehending within the cession of Spain territory eastward of the Mississippi and the Iberville and for extending the cession to the river Perdido. The only treaties between Spain and other nations that affect the extent of Louisiana as being subsequent to the possession of it by France, are first the treaty in 1783

between Spain and Great Britain, and secondly the treaty of 1795 between Spain and the United States. The last of these treaties affects the extent of Louisiana as in the hands of Spain by defining the northern boundary of that part of it which lies east of the Mississippi and the Iberville; and the first affects the extent of Louisiana by including in the cession from Great Britain to Spain the territory between that river and the Perdido; and by giving to Louisiana in consequence of that reunion of the eastern and western part the same extent eastwardly in the hands of Spain as it had when France possessed it. Louisiana then as it ought to be according to treaties of Spain subsequently to the possession by France, is limited by the line of demarcation settled with the United States and forming a northern boundary, and is extended to the river Perdido as its eastern boundary. This is not only the plain and necessary construction of the words, but is the only construction that can give a meaning to them. For they are without meaning on the supposition that Louisiana as in the hands of Spain, is limited by the Mississippi and the Iberville, since neither the one nor the other of those treaties have any relation to Louisiana that can affect its extent, but through their relation to the limits of that part of it which lies eastward of the Mississippi and the Iberville. Including this part therefore as we contend within the extent of Louisiana and a meaning is given to both as pertinent as it is important. Exclude this part as Spain contends from Louisiana, and no treaties exist to which the reference is applicable. . . . In fine the construction which we maintain gives to every part of the description of the territory ceded to the United States a meaning clear in itself and in harmony with every other part and is no less conformable to facts than it is founded on the ordinary use and analogy of the expressions. The construction urged by Spain gives on the contrary a meaning to the first description which is inconsistent with the very terms of it; it prefers in the second a meaning that is impossible or absurd, and it takes from the last all meaning whatever. In confirmation of the meaning which extends Louisiana to the river Perdido, it may be regarded as most consistent with the object of the First Consul in the cession obtained by him from Spain. Every appearance, every circumstance, pronounces this to have been to give luster to his administration and to gratify a natural pride in his nation, and by re-annexing to his domain possessions which had without any sufficient considerations been severed from it; and which being in the hands of Spain it was in the power of Spain to restore. . . .

"It only remains to take notice of the argument derived from a criticism on the term 'retrocede' by which the cession from Spain to France is expressed. The literal meaning of this term is said to be that Spain gives back to France what she received from France; and that as she received from France no more than the territory west of the Mississippi and the Iberville, that and no more could be given back by Spain. Without denying that such a meaning if uncontrolled by other terms would have been properly expressed by the term 'retrocede' it is sufficient and more than sufficient to observe first that with respect to France the literal meaning is satisfied; France receiving back what she had before alienated; secondly that with respect to Spain not only the greater part of Louisiana had been confessedly received by her from France and consequently was literally ceded back by Spain as well as ceded back to France; but with respect to the part in question Spain might not unfairly be considered as ceding back to France what France had ceded to her; inasmuch as the cession of it to Great Britain was made for the benefit of Spain to whom on that account Cuba was restored. The effect was precisely the same as if France had in form made the cession to Spain and Spain had assigned it over to Great Britain; and the cession may the more aptly be considered as passing through Spain, as Spain herself was a party to the treaty by which it was conveyed to Great Britain. In this point of view not only France received back what she had ceded, but Spain ceded back what she had received, and the etymology even of the term 'retrocede' is satisfied. This view of the case is the more substantially just . . . the territory in question passed from France to Great Britain for the account of Spain, but passed from Great Britain into the hands of Spain in 1783 in consequence of a war to which Spain had contributed but little compared with France and in terminating which so favorably in this article for Spain, France had doubtless a preponderating influence. Thirdly, that if a course of proceeding might have existed to which the term 'retrocede' would be more literally applicable, it may be equally said that there is no other particular terms which would be more applicable to the whole proceeding as it did exist. Fourthly that if this were not the case a nice criticism on the etymology of a single term can be allowed no weight against a conclusion drawn from the clear meaning of every other term and from the whole context."*

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* American State Papers.

Further views having been obtained with respect to the interior of Louisiana the department of state, on July 8, 1804, sent additional instructions. The envoys were told that the president was "not a little averse to the occlusion for a very long period of a very wide space of territory westward of the Mississippi, and equally so to a perpetual relinquishment of any territory whatever eastward of the Rio Bravo. If this river could be made the limit to the Spanish settlements and the Rio Colorado the limit to which those of the United States may be extended; and if a line northwest or west from the source of whatever river may be taken for the limit of our settlements could be substituted for the ultimatum line running from the source of the Sabine to the junction of the Osages with the Missouri, and thence northward parallel with the Mississippi, the interval to be unsettled for a term of years would be defined in a manner perfectly satisfactory. . . . It is to be understood that a perpetual relinquishment of the territory between the Rio Bravo and Colorado is not to be made, nor the sum of ten million dollars paid without the entire cession of the Floridas, nor any money paid in consideration of the acknowledgment by Spain of our title to the territory between the Iberville and the Perdido, . . . nor that Spain or the United States shall during the negotiation strengthen their situation in the territory between the Iberville and the Perdido, and that the navigation of the Mobile shall not be interrupted."

It having been learned by the department of state that Mr. Pinckney had left Madrid, Mr. Monroe was directed on October 26, 1804, to repair to that city to open negotiations anew with Spain. The previous instructions were repeated, and he was told that "in case the Spanish Government shall refuse to cede the territory eastward of the Perdido and shall require as indispensable to an acknowledgment of our title to the territory westward of that river an acknowledgment on our part that in ultimately establishing the western boundary of Louisiana, the pretensions of the United States shall not go beyond the proposed western limit to the interval of desert, to-wit: the river Colorado, a line thence to the source of Red river, thence along the highlands, etc., you are authorized after reasonable endeavors otherwise to effect your object to acquiesce in the acknowledgment so required."

In order to secure the definite views of France in regard to the boundary of Louisiana, Mr. Monroe, on November 8, 1804, while on his way to Madrid addressed a letter to M. Talley-

rand requesting a statement of the French interpretation of the language used in the treaties of 1762, 1800, 1801 and 1803. In presenting the request, he said: "It is not stipulated that Spain should cede to France that portion of Louisiana only which she had received from France, or that West Florida should be excepted from the cession. It is, on the contrary, stipulated that she shall cede it such as it was when France possessed it; that is, such as it was before it was dismembered by the cessions afterward made to Spain by Great Britain; that she should cede it with the same extent that it now has in the hands of Spain; that is, entire, which it became by the treaty of 1783, whereby West Florida was ceded by Great Britain to Spain; such as it is according to subsequent treaties between Spain and other powers." Mr. Monroe presented his request in the form of a powerful argument in support of the American claims.

M. Talleyrand wholly disagreed with his contentions, saying among other things: "France, in giving up Louisiana to the United States, transferred to them all the rights over that colony which she had acquired from Spain; she could not nor did she wish to cede any other; and that no room might be left for doubt in this respect she repeated in her treaty of 30th of April, 1803, the literal expressions of the treaty of St. Ildefonso, by which she had acquired that colony two years before. Now it was stipulated in her treaty of the year 1801 that the acquisition of Louisiana by France was a *retrocession;* that is to say, that Spain restored to France what she had received from her in 1762. At that period she had received the territory bounded on the east by the Mississippi, the river Iberville, the lakes Maurepas and Pontchartrain; the same day France ceded to England by the preliminaries of peace all the territory to the eastward. Of this Spain had received no part and could therefore give back none to France. All the territory lying to the eastward of the Mississippi and the river Iberville and south of the thirty-second degree of north latitude, bears the name of Florida. It has been constantly designated in that way during the time that Spain held it; it bears the same name in the treaties of limits between Spain and the United States; and in different notes of Mr. Livingston of a later date than the treaty of retrocession, in which the name of Louisiana is given to the territory on the west side of the Mississippi; of Florida to that on the east of it. According to this designation thus consecrated by time and even prior to the period when Spain began to possess the whole territory between the thirty-first

degree, the Mississippi and the sea, this country ought in good faith and justice to be distinguished from Louisiana. Your excellency knows that before the preliminaries of 1762 confirmed by the treaty of 1763, the French possessions situated near the Mississippi extended as far from the east of this river towards the Ohio and the Illinois as in the quarters of Mobile; and you must think it as unnatural after all the changes of sovereignty which that part of America has undergone to give the name of Louisiana to the district of Mobile, as to the territory more to the north on the same bank of the river which formerly belonged to France. . . . It was under this impression that the French and Spanish plenipotentiaries negotiated and it was under this impression that I have since had occasion to give the necessary explanations when a project was formed to take possession of it. I have laid before His Imperial Majesty the negotiations of Madrid which preceded the treaty of 1801, and His Majesty is convinced that during the whole course of these negotiations the Spanish Government has constantly refused to cede any part of the Floridas even from the Mississippi to the Mobile. His Imperial Majesty (Bonaparte) has moreover authorized me to declare to you that at the beginning of the year 11, General Bournonville was charged to open a new negotiation with Spain for the acquisition of the Floridas. This project which has not been followed by any treaty is an evident proof that France had not acquired by the treaty retroceding Louisiana the country east of the Mississippi."*

It was further stated by M. Talleyrand that Bonaparte "saw with pain the United States commence their differences with Spain in an unusual manner, and conduct themselves toward the Floridas by acts of violence, which not being founded on right could have no other effect but to injure its lawful owners. Such an aggression gave the more surprise to His Majesty, because the United States seemed in this measure to avail themselves of their treaty with France as an authority for their proceedings." Gen. John Armstrong, minister at Paris, in an effort to secure the views of France on the questions, wrote as follows: "On the subject of indemnity for the suspended right of deposit (professing to know nothing of the ground on which the interruption had been given), they (the French Government) would offer no opinion. On that of reparation for spoliations committed on our commerce by Frenchmen within the territory

* American State Papers.

of His Catholic Majesty (Spain), they were equally prompt and decisive, declaring that our claim having nothing of solidity in it must be abandoned. With regard to boundary, we have, they said, already given an opinion and see no cause to change it. To the question, what would be the course of this Government in the event of a rupture between us and Spain? they answered, we can neither doubt nor hesitate; we must take part with Spain; and our note of 30th Frimaire was intended to communicate and impress this idea."

Pursuant to their instructions, Messrs. Monroe and Pinckney, under date of January 28, 1805, presented to Don Pedro Cervallos at Aranjuez, a proposition for the settlement of the difficulties between Spain and the United States. They called attention to the fact that the losses inflicted on American citizens by the suppression of the right of deposit at New Orleans had never been adjusted; that it was important that the boundary between Louisiana and the territory of Spain in the southwest should soon be determined; that the eastern boundary between Louisiana and Florida was yet unacknowledged; that the said boundaries were "the river Perdido on the east and the Rio Bravo to the west;" that the facts and principles to sustain this conclusion were clear and absolute; that the United States had forborne to press for an adjustment from motives of fairness and accommodation; and that the interests of both governments now demanded that these questions should be settled without further unnecessary delay. They therefore submitted a project of a convention between the two countries, and embraced therein their claims to the territory above mentioned, and recommended the appointment of a commission to settle the questions in dispute. In reply to this communication the Spanish minister signified his willingness to take steps to settle the existing differences. Both sides then began the presentation of their arguments in support of their respective claims. The Americans argued in lines mentioned in the previous pages of this volume. The Spanish minister stated among other things that Spanish citizens held unadjusted claims against the United States; that the act of congress in extending the revenue district over the Mobile country and the further proceedings to take possession of West Florida, were unjust to Spain and calculated to involve the two countries in serious difficulties; that West Florida to the Mississippi and the Iberville were owned by Spain, because, not having been received from France in 1762, they were not and could not have been retroceded to France in 1800; that

the French government had already satisfied the United States for damages done by her privateers in Spanish ports by the conventions of April 30, 1803; that the establishment of the port of entry at Fort Stoddert as suggested by the United States did not remove the objection to the act of congress complained of, because the vessels of the United States would have to traverse the waters of Spain to reach such fort, but that the just complaints as to the act would be waived for the time being; and that the Spanish government could not agree to the terms suggested by the American envoys regarding claims alleged to be due them from Spain for damages done by French privateers in the ports of Spain. As it was seen by the Americans that Spain would not yield on the latter point, they dropped it and proceeded to discuss the remaining questions in dispute. They asked for an answer on the question of the reclamations on account of the interdiction at New Orleans and on that of the boundaries.

To these queries the Spanish minister returned the following sweeping reply February 16: "To determine whether Spain is or is not responsible for the damages which your excellencies suppose to have been sustained by the citizens of the United States by the suppression of the deposits at New Orleans in consequence of the edict of the Intendant of that city, it is necessary to examine what are those damages and from whence they have arisen. Such suspension did not interrupt, nor was it the intention to interrupt, the free navigation of the Mississippi; consequently these pretended injuries are reduced to this small point, that for a short time the vessels loaded in the stream instead of taking in their cargoes at the wharfs. This obstruction will appear still less when we consider that during a great part of the time that the deposit was suspended it was in the middle of the winter when the exportation of produce from the western parts of the United States by the Mississippi is very inconsiderable. If the erroneous opinions which were formed in the United States upon the occurrences at New Orleans; if the complaints published in the papers of your country, as false as they were repeated, that the navigation of the Mississippi was interrupted; if the virulent writings by which the public mind was heated, and which led to compromit the American Government and tarnish the good name of Spain, were causes that the inhabitants of the western territory of the United States could not form a correct idea of what passed at New Orleans; and if in this uncertainty they were disappointed in the extraction of their produce, or suffered other inconveni-

ences, they ought to attribute the same to internal causes, which originated in their own country, such as the writings before mentioned, filled with inflammatory falsehoods, the violence of enthusiastic partisans, and other occurrences, which on those occasions served to conceal the truth. The Government of Spain, so far from being responsible for the prejudices occasioned by these errors and erroneous ideas, ought in justice to complain of the irregular conduct pursued by various writers and other individuals of the United States, which was adopted to exasperate and mislead the public opinion, and went to divulge sentiments the most ignominious and absurdities the most false against the Government of His Majesty and his accredited good faith. Estimate the damages which may have arisen to the citizens of the United States by their erroneous conception of what took place at New Orleans, and they will be found to be no other than the trifling inconvenience before mentioned, of their ships loading in a situation not so commodious—an inconvenience for which the Government of Spain is not responsible (neither ought it to be), and which does not in any manner merit to be mentioned, more especially when it is considered that those who experienced it had been enjoying the right of deposit for four years more than was stipulated in the treaty, and this notwithstanding the great prejudice it occasioned to His Majesty's revenue, by making New Orleans the center of a most scandalous contraband trade, the profits of which it is not improbable but that some of those individuals have in part received, who now suppose themselves injured by said trifling inconvenience. After four years more than the treaty expressed, to wit—three years, making in all seven years, the Intendant thought that it was his duty no longer to permit a deposit which gave an opportunity for carrying on a fraudulent commerce, prejudicial to the interests of His Majesty, for which he was accountable; he thought it was necessary that New Orleans should no longer be the place of deposit on account of those inconveniences, and in consequence prohibited the same. . . . The Intendant ought to have asked instructions from his Government. . . . What in strict justice was the deposite at New Orleans? A generous and gratuitous concession of the King my Master for three years. It is true that His Majesty agreed to continue the favor of the deposite, if it should be found that no inconvenience resulted from it, and of this no person was a better judge than His Majesty and his agent in that colony. . . . But this is not intended to support the edict of the Intendant; His Majesty has disapproved the act. . . .

Most certainly the Intendant had a right to prohibit the deposite, and consequently the Government of Spain cannot be responsible on this point; and this reflection acquires a double weight, if we consider the trifling inconvenience occasioned by the true effect of the said edict of its short duration, and on the other hand the serious damages which the King's revenue has experienced by the continuance of the deposite for four years over and above the term stipulated in the treaty." In a subsequent communication Mr. Cervallos defined the boundaries between Spain and the United States on the west as follows:

"It would be very easy to make it appear that the most exaggerated claims of France never had the extent which your excellencies wish to give to Louisiana on this (west) side. But even if they should have had such claims, or France positively should have tried to include, under the name of Louisiana, the territories which His Catholic Majesty possessed, what right or claim could be founded in a document which Spain never has recognized, nor does recognize, and which never could prejudice in any manner her acquired rights? The answer of Spain on this occasion is as simple as just: That, if Louis XIV, or the Government of France exceeded its powers in granting territories or rights over territories which were not their own, or that Spain claimed possession of, or property in, that grant ought to be considered as null as far as it extended over these territories, and that it flowed, without doubt, from the total ignorance which prevailed in those days with respect to the geography of the territories situated at a little distance to the west of the Mississippi, and of the establishments of the Spaniards in those parts. More ancient, and proved by repeated acts of possession, than the aforesaid patent of Louis XIV, is the royal order of the 12th November, 1692, already cited, by which His Catholic Majesty ordered them to make new expeditions to the Texas; and the same are the other authentic acts and establishments of the Spaniards in that quarter. The limits between Louisiana and the Texas have been always known, even when the French possessed Louisiana. Near the beginning of the last century, the venerable Alanjet, of the order of St. Francisco, founded, in the province of Texas, towards the confines of Louisiana, different missions, among them that of Necogdoches. And a few years after he wrote, and it was generally known in the writings of those times, that the province of Texas, or New Philippines, had its boundaries about the middle of the Gulf of Mexico to Poncenes, the Rio Grande, and to the East Louisiana. Depending on Louisiana, we find upon the Colorado (Red) which

discharges into the Mississippi, the post of Natchitoches, which the French took from Spain. But, at seven leagues from this, you will find the aforementioned post of Nuestra Senora de Los Adaes, belonging to the province of Texas; and it is undoubted that the Baron de Riperda, being Governor General of this province, and successor of Don Angal de Manos, appeared to have made treaties and conventions with the Indians of the same province of Texas, stipulation that the Spaniards might make among them such establishments as they pleased acknowledging from that time as depending on the province of Texas, the Indians Stydes, Nacogdoches, Assenares, Nobedacuis, Vidais, Ozquires, Malayes, Ocuanes, Tancques, and Apaches. To the year 1770, there always was in the fort of the Adaes, from the time of its establishment, a competent number of Spanish soldiers, and the same in that of Ozquisaz et St. Saba; and it was not until the year 1773 that the Lieutenant Don Josef Gonzales evacuated the post of Adaes, whose garrison was no longer necessary, as Spain possessed Louisiana.

"It follows, therefore, that the boundary between the provinces of Texas and Louisiana ought to be by a line which, beginning at the Gulf of Mexico, between the river Caricut, or Cascassia, and the Armenta, or Marmentoa, should go to the north, passing between the Adaes and Natchitoches, until it cuts the Red river. And as from this point the limits which ought to be established on the northern side are doubtful and little known, it appears indispensable to refer them to the prudent investigation of commissioners to be named by both parties, in order that they, viewing the territory, and having with them the documents and dates that will be given them, rectifying what ought to be rectified, and furnishing the necessary light to both Governments, upon limits which have never been fixed or determined with exactness, may thus enable them to fix the demarcation completely conformable to the wishes of both."

In claiming the extension of Louisiana westward to the Rio Bravo or Grande the American envoys, Messrs. Monroe and Pinckney, were at a disadvantage, because their arguments were required to be based on those of France, and the arguments of the latter were largely unknown. Nevertheless, they made a strong showing, as was expected from two such powerful logicians. They placed themselves, so to speak, in the shoes of France, and used the arguments that France would most likely have used had she not parted with Louisiana. They stated that the Mississippi had been explored and claimed for France by

Sieurs Joliet, Marquette, La Salle and Father Hennepin from 1673 to 1682; that La Salle with two hundred and forty persons in 1685 had formed a settlement and erected a fort on the Bay of St. Bernard; that this extension was recognized in the letters patent to Anthony Crozat in 1712 by Louis XIV of France, showing that he claimed the country to that bay by reason of this discovery and settlement, in fact claimed the country westward to Old Mexico and New Mexico and that the country as far as the Rio del Norte had been explored in 1713–14 by Sieur D'St. Denis, a Frenchman. As La Salle's settlement was made on the west bank of the Colorado, the Americans claimed all the country watered by that river. The grant of Louis XIV to Crozat was stated by them to be the principal basis of their claims. Numerous authorities were cited by them in support of their contentions. Many geographers had published maps showing the extension of Louisiana to the Rio Bravo or Grande; these authorities were named. They made light of the claims of Spain founded on the missions established among the Indians, and showed that many of the settlements claimed had been abandoned. But it was also shown that the French settlement on the Bay of St. Bernard had been abandoned, and that beyond Natchitoches the French had few if any settlements.

The language used by Louis XIV in the patent of Louisiana granted at Fontainebleau, September 14, 1712, to Anthony Crozat, was as follows: "The care we have always had to procure the welfare and advantage of our subjects having induced us . . . to seek all possible opportunities of enlarging and extending the trade of our American colonies, we did in the year 1683 give our orders to undertake a discovery of the countries and lands which are situated in the northern part of America between New France and New Mexico; and the Sieur de la Salle, to whom we committed the enterprise, having had success enough to confirm a belief that a communication might be settled from New France to the Gulf of Mexico by means of large rivers; this obliged us immediately after the peace of Ryswick, to give orders for establishing a colony there and maintaining a garrison, which has kept and preserved the possession we had taken in the very year, 1683, of the lands, coasts and islands which are situated in the Gulf of Mexico between Carolina on the east and Old and New Mexico on the west. But a new war having broke out shortly after, there was no possibility till now of reaping from that colony the advantages that might have been expected from thence. . . . And whereas, upon the information we have

received concerning the dispositions and situation of the said countries known at present by the name of the Province of Louisiana, we are of opinion that there may be established therein a considerable commerce, . . . we have resolved to grant the commerce of the country of Louisiana to the Sieur Anthony Crozat. . . . For these reasons, . . . we by these presents signed by our hand have appointed and do appoint the said Sieur Crozat to carry on a trade in all the lands possessed by us and bounded by New Mexico and by the lands of the English of Carolina, all the establishments, ports, havens, rivers and principally the port and haven of the Isle Dauphine heretofore called Massacre; the river of St. Louis heretofore called Mississippi from the edge of the sea as far as the Illinois, together with the river St. Phillip heretofore called the Missouri and of St. Jerome heretofore called Ouabache, with all the countries, territories and lakes within land and the rivers which fall directly or indirectly into that part of the river St. Louis. Our pleasure is that all the aforesaid lands, countries, streams, rivers and islands be and remain comprised under the name of the Government of Louisiana, which shall be dependent upon the General Government of New France, to which it is subordinate; and further that all the lands which we possess from the Illinois be united . . . to the General Government of New France and become part thereof, ..."*

The authority of D'St. Denis is shown in the following letter: "We, Antoine de la Motte Cadillac, Seigneur of Davaguet and Monderet, Governor of Dauphin Island, Fort Louis, Biloxi, and of the country and province of Louisiana, do hereby authorize the Sieur D'St. Denis and the twenty-four Canadians of his party, to take with him any number of Indians, whom he thinks necessary, to the Red River, or wherever else he may choose to go, in search of the mission of the Recollet, Father Francisco Hidalgo, agreeably to the letter written by him, on the 17th of April, 1711, for the purpose of buying horses and cattle for the colony and province of Louisiana; and we request all whom it may concern, to suffer the said Sieur D'St. Denis and his party to pass without impediment. In faith whereof, we have signed this, and seal it with the seal of our arms, and have caused it to be countersigned by our secretary, at Fort Louis, Louisiana, this 12th of September, 1713."†

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* Narrative and Critical History of America: Winsor.

† Annals of Congress.

Don Pedro Cervallos in his note of February 24, 1805, to the American envoys said, "The first thing which calls our attention in explaining the said article is the expression *retrocede*, and which also serves to denominate the treaty of St. Ildefonso, called the treaty of *retrocession*. The sense of this expression is obvious; it cannot be misinterpreted or confounded; its meaning is evidently this: *That His Catholic Majesty returns to France the territory which he* (France) *had received from her* (Spain). Now let us examine if France put Spain into possession of the territory which occasions the present discussion. It is without doubt that by the treaty of 1763, it was agreed that the separation between France and England of their possessions in that quarter, should be by a line through the middle of the rivers Mississippi and Iberville and the lakes Maurepas and Pontchartrain to the sea; consequently France ceded to England the river and port of Mobile, as well as all her other possessions on the east of the Mississippi, the island and city of New Orleans excepted. From that time this territory formed a part of the possessions of the English under the name of West Florida, and France lost all claim and title to it. Thus it became an English possession; and during the war of 1779 Spain conquered from England all that the latter possessed by the title of West Florida; and in the definitive treaty of 1803 (1783), England ceded to Spain under a guaranty both Floridas. It is then seen that the title by which Spain holds possession of West Florida was acquired by the right of conquest and also by the cession made by England under the treaty of 1783. From that time the title of Spain to that territory is entirely independent of France and of the cession of Louisiana made by her; and consequently Spain could not give back to France what she did not receive from her. It is said in the third article that His Majesty retrocedes Louisiana 'with the same extent of territory which it now has in the hands of Spain.' This expression confirms most explicitly the right which Spain preserves over the said territory to the east of the Mississippi; because it is well known that Spain possesses West Florida, not as Louisiana but as Florida. This is confirmed by the title of the Governors of Havana—*Captain Generals of the two Floridas;* and the treaty of 1795 where we read the following conclusive words, 'that the southern limits of the United States, which separate them from the Spanish colonies of East and West Florida,' etc. . . . It is clear that if in the treaty of St. Ildefonso it had been wished to include West Florida, it would have been expressly mentioned by the name which authenticated it and under which it is generally

known: for it would have been ridiculous to have given the name of Louisiana to that territory because it had once formed a part of that province, as much so as it would be at present to call the State of Ohio Louisiana. . . . The second clause, 'and which it had when France possessed it,' alludes only to the manner in which France possessed it in 1763 when she delivered it to Spain; for if any other sense is given to it that expression cannot be consistent with the anterior which says, 'with the same extent which it now has in the hands of Spain,' for if in the second clause a greater extent should be given to Louisiana than that which it had in the hands of Spain, how could it be 'with the same extent it had in the hands of Spain? . . . The third clause is still more decisive, 'such as it ought to be according to subsequent treaties between Spain and other Powers.' The treaties here alluded to are not nor can be others than those of 1783 between Spain and England, and 1795 between Spain and the United States. By the first His Majesty acquired the territory east of the Mississippi under the name of West Florida, and consequently to be 'as it ought to be' since the treaty of 1793 (1783) is with the exclusion of a territory acquired at that period and with a name so different. By the second His Majesty permitted the deposite and fixed the limits between Louisiana, the Floridas and the United States 'to be as they ought to be' after the treaty of 1795, is with the exclusion of France to the rights of the United States in this treaty. And thus as the treaty of St. Ildefonso could not affect the rights which the United States acquired by that of 1795, so neither did it affect nor could it affect the rights acquired by His Catholic Majesty by the treaty of 1783 with England. The celebrated geographer of the United States, Mr. Ellicott, appointed to run the line of division between the said States and the Spanish provinces, in his work published in 1803, says, 'It does not appear by the cession of Louisiana to the United States we obtain the whole of both sides of the Mississippi, for . . . it will be seen that the island of New Orleans, which lies on the east side of the Mississippi only extends north of Manshak, from thence northerly along the east side of the river to the southern boundary of the United States, is still held by His Catholic Majesty as a part of West Florida.' He again says, 'the important and safe harbors in both the Floridas still remain in the possession of His Catholic Majesty.' . . . The treaty of retrocession of 1800 was a contract between Spain and France, and consequently it was for France to have represented in case she had not received all the territories expressed in

that stipulation. And it is certain that the Prefect Laussat, charged to carry the treaty into effect, being perfectly instructed in it, and being possessed with the intentions of his Government, has expressed himself satisfied with the manner in which it was carried into effect, without his having been put into possession of the territory in question."

On the 12th of May, 1805, the Americans submitted the following proposition to the Spanish court: "That upon condition that His Catholic Majesty will cede to the United States all of his possessions eastward of the Mississippi and arbitrate the claims of the citizens of each Power according to the deferred treaty of August 11, 1802, we will make the Colorado the boundary between Louisiana and Spain. . . . We will relinquish the claims to spoliations which were committed by the French within the jurisdiction of Spain in the course of the last war, . . . and we will also relinquish all claim to compensation for the injuries which were received by the suppression of the deposit at New Orleans."

In reply to this proposition, Mr. Cervallos said that he could not see anything therein to induce Spain to accept; that "although His Majesty has the power to bargain for the Floridas as owner of them, and also has the right if he pleases to ratify the conventions of August 11, 1802, which is suspended for the reason your excellencies know, there are wanting equal right and power in the United States to make the cession your excellencies mention. The United States have no right to demand of Spain compensation for damages occasioned by the French privateers, neither have they to the claim for injuries by the suppression of the deposit at New Orleans. And as to the claim to fix the limit of Louisiana at the Rio Bravo, from which flows the assertion that the fixing it at the Colorado is to be considered as a cession, it is equally necessary for me to observe to your excellencies that the Spanish Government has made it appear and is equally ready to show more and more by the most irrefragable proof that the limit which separates Louisiana and the Spanish possessions is a line which, beginning in the Gulf of Mexico between the river Caracut or Carcase and the Armienta or Marmentao, ascends toward the north between the Adais and Natchitoches until it cuts the Red river; and as from this point they are doubtful and little known the limits which ought to be marked on the northern side appear to be proper subjects for reference to the prudential investigations of commissioners of limits to be named by both parties. . . . It cannot be concealed that, as a consequence of the propositions you

have made in your note of the 12th, Spain would cede to the United States, not only the territories which indisputably belong to her to the east of the Mississippi, that is the two Floridas, but also others equally her own in the interior province of New Spain without receiving anything in return but the renunciation of a right which she does not acknowledge in the United States, which is to reclaim for the damages arising from the suspension of the deposite and for those occasioned by the French privateers on the coast and in the ports of Spain during the last war."

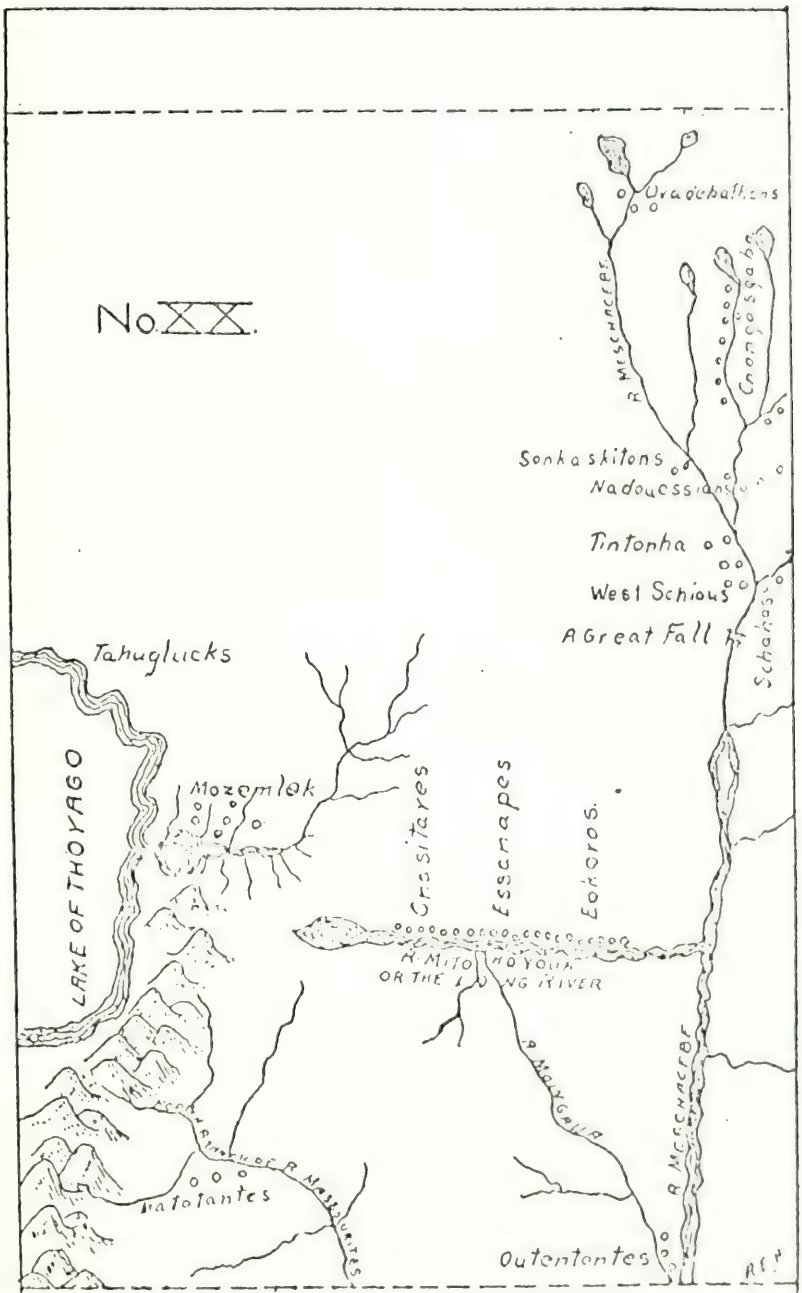
This positive refusal of the Spanish government to accede to the American propositions or to concur in the views of the American envoys, terminated the negotiations which Mr. Monroe had been specially sent to Madrid to conduct in conjunction with Mr. Pinckney. They returned a brief answer May 18, 1805, to the letter of Mr. Cervallos, in which they said, "We consider the negotiation concluded, and have therefore only to remark that we shall hasten to communicate the result to our Government, who will not fail to bestow on it the attention which is due to a concern of such high importance to the United States." Mr. Monroe asked for his passports, in order to repair to London, to which post he had been assigned, as soon as the Spanish negotiations should be ended. In their report to the department of state, the envoys said, "We experienced on the part of Spain neither a spirit of candor nor conciliation in the management of the business nor of accommodation in the conditions. In this latter point it has disclaimed our right in every question on which it was possible that a difference of opinion could exist; it has pushed the pretentions of Spain to the most extravagant extent in each; and insisted finally in a tone not a little imperious that those exaggerated pretensions should be the standard by which the subsisting differences and their future relations should be regulated."

During the negotiations to effect a settlement with Spain, the department of state informed Mr. Monroe on May 23, 1805, that "it appears that France has arranged herself on the side of Spain in such a manner that Spain will neither be disposed nor be permitted to bend to our claims either with respect to West Florida or the French spoliations. What part France may take in relation to the western boundary of Louisiana seems not to have been disclosed. From the silence on that point in Talleyrand's note of November 8th in answer to yours, in which the claim of the United States to the Rio Bravo is expressly asserted, and from the confidential acknowledgment of that boundary by M. Laussat to Governor Claiborne and General Wilkinson, it might be

expected that on this important point France would side with us against Spain." But it was realized that, owing to pending events, no reliance could be placed on France to substantiate the American claims. Spain seemed wholly averse to any concessions and France seemed more than willing to support her. With this view of the situation Mr. Madison wrote, "The alternative presented by this event is that of war, or a state of things guarding against war for the present and leaving in vigor our claims to be hereafter effectuated. Against war if to be safely and honorably avoided the considerations are obvious and powerful." Two essential articles were to be insisted upon: "That Spain should not strengthen her armaments within the disputed limits, and that she should not obstruct the free navigation of the Mobile and other rivers passing from the United States through the Floridas to American vessels."

Thus the views of both countries were presented with the strongest possible arguments, during which time the diplomats exhibited surprising skill in the art of expression, presentation, attack and defense. Severe and apparently traducing statements by one were countered by mollifying observations of the other; thrust was followed either by parry or by dodging. The arguments advanced in subsequent stages of the diplomatic contest did not vary materially from those already given; but they were vastly elaborated and extended. The instructions to the American envoys required them to secure West Florida under the claim to Louisiana if possible, which meant if they could out-argue or out-maneuver the Spanish ministry. They therefore sought every pretense that favored the acquisition of West Florida as a part of Louisiana. On the other hand, the Spanish ministry adroitly evaded the snares prepared by the Americans, and held vigorously against the spoliation claims, the deposit indemnifications and the boundaries demanded by the envoys of the United States.

In an note written by Gen. John Armstrong in a pamphlet entitled a "Review of Adams's Eulogium upon James Monroe," occurs the following statement: "Mr. Adams asserts that much ability was shown in this abortive negotiation by Mr. Monroe and his colleague, Mr. Pinckney. Does he forget, or had he overlooked, the admission to be found in Mr. Monroe's preliminary letter to Talleyrand, 'that we had bought from France only what France had bought from Spain?' By this admission the question became one, not of construction, but of fact. It was no longer what the terms of the treaty of St. Ildefonso would warrant us in demanding, but how those terms were understood by the parties



Upper Part of Coxe's
Map of Carolana

to that instrument. Spain denied that she had ceded West Florida to France, and France denied that she had either sold, or intended to sell to us, more than she had bought from Spain. Such was the *Pons Asinorum** which stopped the progress of Mr. Monroe and his colleague at Madrid. By the way, the construction given to the treaty of St. Ildefonso, on which the United States so long and pertinaciously relied and which Mr. Madison's ingenuity made so plausible, was a suggestion of Mr. Livingston's, submitted by him to his Government and adopted by it, but to which Mr. Madison *for some time refused his assent*. See Mr. Livingston's official correspondence with Mr. Madison in the spring of 1803."

When stripped of all unnecessary verbiage, the important points in the controversy over the eastern boundary of Louisiana narrowed down to, 1st, the meaning and intended application of the term "retrocession;" and, 2d, the Louisiana that was intended to be conveyed by the retrocession of 1800 to France and of 1803 to the United States, or in other words, the Louisiana as held by France prior to 1762, or as held by Spain subsequent to 1762, the latter with or without West Florida attached. The heading of the treaty of St. Ildefonso concluded October 1, 1800, is in French as follows: "Traité préliminaire et secret entre la république Française at Sa Majesté Catholiqué, touchant l'agrandissement de Son Altesse Royale le Duc de Parma, en Italie, et la rétrocession de la Louisiane;" and in the third article the word "retrocede" is employed. In many translations of this treaty the word "restore" is used, as being the nearest equivalent of the word "retrocede." Some translators employ the words "recede" and "recession." The admitted meaning in the original was, to give back what had been previously received. West Florida was never received by Spain from France; consequently it was contended by both France and Spain that the treaty of retrocession of October 1, 1800, gave back only the Louisiana which Spain had received from France in 1762 and which extended no farther eastward than the Mississippi and the Iberville. West Florida was secured to Spain by conquest from Great Britain in 1783. After 1783, upon which date Spain secured West Florida from Great Britain, it was not attached to Louisiana but remained a separate province; consequently, never after 1762 was West Florida a part of Louisiana. If, then, the Louisiana conveyed by Spain

* A Latin expression meaning an ass's bridge or a help to dull pupils.

to France in 1800 and by France to the United States in 1803, embraced West Florida, the conveyance must have meant the Louisiana as it existed in the possession of France prior to 1762. In the treaty of St. Ildefonso the Louisiana conveyed was "in the same extent which it now has under the dominion of Spain and of other States," and in the treaty conveying the province to the United States the language was, "with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States." Under the language of the treaty of St. Ildefonso, the Louisiana referred to could have been no other than the one extending no farther to the eastward than the Mississippi and the Iberville, because that was the limits of "now." The same is true under the first of the three clauses above in the treaty of 1803. The second clause, "with the same extent that it had when France possessed it," is conformable, because France possessed it from 1800 to 1803 no farther than the Iberville. The last of the three clauses above is conformable to the Spanish-French contention. So that neither of the clauses disfavors the claim that Louisiana extended no farther eastward than the Mississippi and the Iberville. Thus all of the leading points seem to favor the Spanish construction. It should be said that although the American envoys presented strong and adroit arguments, they never succeeded in conclusively answering the position of the Spanish ministry, backed with emphasis by the opinions of the French government. The strength of this position was fully recognized by the United States; and by reason of the fact that the people very much wanted West Florida, and as the "wish is father to the thought," the judgment of many was guided by their wants and accordingly they thought they had a right to the possession of West Florida. It was easy to look on the popular side—the one favoring the United States. It was hard to see anything in favor of the Spaniards, whom nearly everybody disliked.

The views of Spain and of the United States are well stated by the historian McMaster, who says: "Spain in 1783 received the two Floridas from England, never having received either of them from France. When, therefore, in 1800, by the secret treaty of San Ildefonso, Spain bound herself to return Louisiana to France, she bound herself to give back what France had given her in 1762 and not what England had given her in 1783." In regard to the views of Jefferson and Madison he said, first

stating their position: "Spain in 1800 owned West Florida. West Florida was once a part of Louisiana. Spain in 1800 receded Louisiana to France. She therefore receded West Florida. Had such reasoning been applied to a real estate transaction in private life, the folly would have been at once apparent. The treaty of 1800 was a treaty of retrocession. Spain then gave back to France what France had given to her in 1762, and nothing more nor less. In 1762 Spain did not own West Florida. She could not, therefore, in 1800 have receded it to France."* As a matter of fact, it required the skill of such men as Jefferson and Madison to make a case of any moment whatever in favor of the contention that Louisiana included West Florida.

Although it does not seem that Spain deliberately closed all negotiations, and although it seems clear that she simply insisted on not yielding any of her rights to the American envoys, the United States viewed the matter in an altogether different light. The most that can be said is that the negotiators were so far apart in their views and so unwilling to yield any material claim, that the Americans were as much to blame as the Spaniards that an adjustment of the differences could not at that time be effected. Early in 1806, it was determined by the president:† "1st, That the manner in which the negotiations at Madrid had been closed by Spain forbade any application whatever to her for a renewal of them; 2d, That the case should be presented to Congress for such provision as it might be thought to require on their part; 3d, That in the meantime you (Gen. John Armstrong, minister to France) should be charged to place before the French Government the necessity to which Spain, by refusing to concur in a diplomatic adjustment of her controversies with the United States, had reduced the latter of seeking justice by those ulterior measures which the occasion called for." General Armstrong was told to reach Spain with the views and intentions of the United States through the medium of the French government. At the same time he was sent the draft of a treaty to be concluded with Spain, which embraced the claims of the United States already mentioned herein. He was told that the French government should be informed that the United States would make no open overtures to Spain; that the rejection by Spain of the special overtures lately concluded, "followed by her military and menacing indications within and near the

* History of the People of the United States: McMaster.

† American State Papers.

controverted territories, the United States, though ready to meet Spain in negotiation under the auspices of a common friend, do not consider it belonging to them to court a further negotiation in any form; that consequently the steps necessary on the part of Spain must be the result either of her own reflections, or of the prudent counsel which France may undertake to give her;" that the methods of accomplishing this object must be left to the sound discretion of General Armstrong; that France should be made to see that an amicable adjustment of the differences between Spain and the United States would be much more preferable to Napoleon than a resort to arms; that the United States were bent on an early settlement of those differences; and that in this favorable crisis matters should be pressed within reasonable limits. The objects were to secure West Florida certainly, either as already ceded to the United States as a part of Louisiana or otherwise, to purchase East Florida, to obtain the indemnities claimed, and to establish the boundary between Louisiana and Texas on the Colorado, or farther westward if possible. It was stipulated that, as a last resort, the Sabine might be fixed as the western boundary of Louisiana. It was also provided: "1st, That the sum to be made payable to Spain for her cession is not to exceed five millions of dollars; 2d, That as little as possible and in no event more than two millions are to be paid prior to the delivery of possession or the ratification; 3d, That as ample a provision as possible be made for indemnities, . . . which claim is not less than four millions of dollars; 4th, That the agreement be made to cover cases where both French and Spanish subjects are the wrong-doers, &c."

It was difficult for the United States to see what object Spain had in rejecting the offers of the American envoys. Mr. Madison wrote, May 25, 1807, to Mr. Bowdoin, that "the conduct of Spain is not easily explained. Several causes have probably united in producing her obstinate repugnance to meet our reasonable overtures; perhaps the most powerful may have been a calculation that she would have in any event the support of one or the other of the two great rivals of Europe; and that her dexterity would be able to connect her with whichever of them should ultimately be ascendant. It would seem to be impossible, however, that a crisis can be much longer procrastinated. The obstructions which are thrown in the way of the trade through the Mobile, and even the use of the river by the United States

for public purposes, are kindling a flame which will not be very manageable."

Under date of July 15, 1807, Mr. Madison wrote to Messrs. Armstrong and Bowdoin that, owing to very recent hostile and flagrant acts of Great Britain in American waters, war with that country seemed like to break forth at any moment; that inasmuch as such a war would require large sums of money, it was thought imperative that, if an agreement to pay to Spain the sum stipulated for the Floridas had not been concluded, negotiations for their purchase should for the time being be suspended; that if such agreement had been concluded, a re-modification of the terms of payment should be sought; that should war occur between the United States and Great Britain, the latter might proceed to occupy the Floridas, to the injury both of Spain and the United States; and that "should Spain still obstinately persist in rejecting or retarding an arrangement concerning the Floridas, she must at least see the necessity of hastening a satisfactory one on other subjects, particularly in the case of the Mobile, for the free use of which, by the United States, orders ought to be sent without a moment's delay."

In his message to congress of December 6, 1805, President Jefferson reviewed the relations existing between Spain and the United States.* He stated that a convention (of August 11, 1802) had been entered into by the ministers of the two countries; that it had been agreed that spoliations committed by Spanish subjects should be paid for; that those committed by French vessels in the ports of Spain should remain for further discussion; that before such convention had been ratified, "the transfer of Louisiana by France to the United States took place, an event as unexpected as disagreeable to Spain;" that "From that moment she seemed to change her conduct and dispositions toward us;" that she had at first protested against the right of France to alienate the province, but soon retracted and confirmed the right; that she had then taken great offense "at the act of Congress establishing a collection district on the Mobile although by an authentic declaration immediately made, it was expressly confined to our acknowledged limits, and she now refused to ratify the convention signed by her own minister under the eye of his sovereign, unless we should consent to alterations of its terms, which would have affected our claims against her for the spoliations by French subjects carried into Spanish

* Messages and Papers of the Presidents.

ports;" that Mr. Monroe had been sent on a special mission to Madrid to effect the desired objects; that his mission had resulted in total failure; that no satisfaction had been given as to the boundaries of Louisiana; that Spain seemed determined to advance on the American possessions on the Texas and the Florida borders; that he had instructed the American officers there to protect our citizens and patrol the frontier; that the Spanish officers at New Orleans were "required to depart without further delay;" and that the conduct of France was equally as bad. He concluded by referring the subject to the consideration and settlement of congress, intimating that as the department of state had been unable to secure the rights of the United States, it was the province of congress to devise means to effect such security.

In the house of representatives, Mr. Randolph, from the committee to whom were referred the message and its accompanying papers, reported that "The committee have beheld with just indignation the hostile spirit manifested by the Court of Madrid toward the United States in withholding the ratification of its convention with us," unless with unallowable alterations in its terms; "the piratical depredations upon our fair commerce; the obstruction of the navigation of the Mobile; the refusal to agree to a fair adjustment of the boundaries of Louisiana;" and the invasion of the undisputed territory of the United States. He declared that though there was ample cause for a formal declaration of war, the citizens loved peace and would not resort to war except as a last resort; that the [illegible] of the United States would render a war extremely oppressive; that when that debt should have been paid, "then and not till then may we bid defiance to the world. The present moment is peculiarly auspicious for this great and desirable work. Now, if ever, the national debt is to be paid by such financial arrangements as will accelerate its extinction by reaping the rich harvest of neutralty and thus providing for that diminution of revenue which experience teaches us to expect on the general pacification of Europe. And the committee indulge a hope that in the changed aspect of affairs in that quarter, Spain will find motives for a just fulfillment of her stipulations with us and an amicable settlement of limits upon terms not more beneficial to the United States than advantageous to herself. . . . But whilst the committee perceive in the general uproar of Europe a state of things peculiarly favorable to the peaceable pursuit of our best interests, they are neither insensible to the

indignity which has been offered on the part of Spain nor unwilling to repel similar outrage."

An impartial review of the relations of Spain and the United States of that time leads to the conclusion that the former did not merit the severe restrictions of Mr. Jefferson. In regard to the French spoliations, Spain had the opinions of a half dozen of the best lawyers in the United States that she was not liable, and in addition had the positive statement of France that they had been paid by the latter under the Louisiana cession treaty. She, therefore, on the face of the situation, felt herself justified in refusing to accede to the demands of the United States. In regard to the Floridas, it was clear then and has been proved since, that the United States had no *conclusive* claim to any portion of the western province. With respect to the boundary between Louisiana and Texas, Spain had much the better claim as far eastward as the Sabine, if not farther, by reason of numerous permanent settlements, unless it may have been to a small territory in the vicinity of Yattasse. She was justified in extending her domains as far as her righteous claims would allow.

Alarming letters were received in 1805 from Natchitoches by the American authorities of the serious state of affairs there and farther to the westward.* In August, Captain Turner wrote from there that "our neighbors still keep up that sort of conduct towards us, which a state of war alone would justify. Every person who goes from here is strictly examined and searched, and all letters found in their possession are broken open and perused with an expectation of finding them big with treason, stratagems and crimes." On October 15 he wrote: "The Spaniards are undoubtedly meditating mischief in this quarter; their emissaries have been at work among the Indians and negroes. The night before last, nine of the latter ran off for Nacogdoches." It was clearly an attempt on the part of the Spaniards to win the negroes and the Indians to their side in what was considered a pending war between the United States and Spain. Captain Turner wrote October 15: "The whole district is in the most alarming state, and inevitable ruin to it and perhaps all Louisiana must be the consequence, unless prompt measures are taken to stop the infamous proceedings of the infernal Spaniards. The object of the Spaniards seemed to be to induce all the Indians and negroes to move across the

* American State Papers.

Sabine river to the western side, to be in readiness for a war against the Americans. The news was received that at many posts on the western side of the Sabine, the Spaniards were reconstructing old forts and building new ones; that the Spaniards intended to march eastward and finally take New Orleans. Nearly all of the posts in what is now Texas were strengthened, and in every way it was manifest that the preliminary work of war was in progress.

In a message dated March 19, 1806, the president informed congress that the Spanish authorities had invaded the territory in dispute between the two countries, and were building new posts and making new settlements; that he had ordered the troops of the United States in the southwest to require (with force if necessary) the Spaniards to remain on the west side of the Sabine river; that the inhabitants of the United States were requested to confine themselves on the east side of that river, "which by delivery of its principal post, Natchitoches, was understood to have been itself delivered up by Spain, and at the same time to permit no adverse post to be taken nor armed men to remain within it (the country east of the Sabine)." In accordance with the orders of the war department, Major Porter, American commander at Natchitoches, having learned that a detachment of Spanish troops had established themselves east of the Sabine, dispatched Capt. E. D. Turner with a force of sixty men to remove the Spaniards beyond that river and to patrol that region to see that no further attempts were made to occupy the territory thus claimed. Twenty Spanish troops were found between the Sabine and the Adais and forced much against their inclinations to depart beyond the Sabine and told not to return under any circumstances.

This proceeding of the American forces was promptly resented by the Spanish authorities in that region, who threw a considerable force of troops across the Sabine and established a camp, with the apparent intention of remaining. This force was commanded by Col. Simon de Herrera.* Early in August their withdrawal was demanded by Col. T. H. Cushing, stationed at Natchitoches, on the ground that the country was claimed by the United States, that the two countries were at peace, and that, inasmuch as negotiations were then pending to settle the ownership of the country, an advance of Spanish troops into the disputed country could not be tolerated by the United

* American State Papers.

States. Colonel Herrera politely replied that the country was owned by Spain, and that therefore it was deemed right for the Spanish troops to occupy the same. He trusted that no trouble would be the result of the rightful acts of Spain. Governor Claiborne also wrote at length to the Spanish commander that his removal to the western side of the Sabine was required and absolutely necessary. Again Colonel Herrera replied from the "Spanish Camp," arguing mildly at considerable length, of the rights of Spain to the territory and in justification of certain acts complained of and of his course generally. Again Governor Claiborne answered his arguments and demanded his removal. Finally specific orders from Washington were received to the effect "that the actual quiet possession of the country by the United States east of the river Sabine, ought and will be considered as fully within the limits of the country surrendered to the United States on taking possession of this place (Natchitoches); and therefore any attempt on the part of His Catholic Majesty's officers to disturb the existing state of things by endeavoring to occupy any new post east of the Sabine, or westward or northward of the former boundaries of what has been called West Florida, must be considered by the Government of the United States as an actual invasion of their territorial rights, and will be resisted accordingly."

Whereupon, Gen. James Wilkinson, with headquarters at Natchitoches, in a strong yet pleasant communication to the Spanish commander, demanded the removal of the Spanish forces, declaring among other things that, "My sense of the high respect which is due from one old soldier to another prohibits the idea of menace; but as our honor forbids stratagem or deception before our swords have been drawn, I owe it to my own fame and to the national character to warn you that the ultimate decision of the competent authority has been taken; and that my orders are absolute and my determination fixed to assert and, under God, to sustain the jurisdiction of the United States to the Sabine river against any force which may be opposed to me. Retire then, sir, I conjure you, the troops of your command from the ground in controversy and spare the effusion of human blood, without prejudicing your own honor or the substantial interest of His Majesty, your Royal master." But the Spanish commander at Nacogdoches, Col. Antonio Cordero, sent a temporizing reply, and continued to hold his position. To match the policy of the Spaniards, General Wilkinson, early in October, advanced his command near to the

Spanish camp, sending wo d beforehand that he meditated no immediate act of hostility toward the Spanish forces.

It was afterward learned that Don Antonio Cordero, the Spanish governor of the province of Texas, had marched from the vicinity of San Antonio with six hundred regulars, a considerable body of militia and Indians, and large droves of horses, mules and cattle. He stopped on the Trinity river, where he was joined by the forces of Don Simon Herrera, the commandant of Monteray in the province of New Leon, who was sent with reinforcements by Don Nemesio Salcedo, captain general of the internal provinces. Cordero immediately sent large reinforcements to Nacogdoches. Later he proceeded to the Sabine and threw part of his command across that river. In the negotiations which followed, it was agreed that the Spanish should retire beyond the Sabine and the Americans should not advance beyond the Arroyo Hondo; and that both commands should await the settlement of the boundary by the negotiations then pending between the two countries. The Spanish commander was informed that the quiet possession of the country east of the Sabine should be insisted on, and that any attempt of the Spanish to occupy the country to the eastward of the Sabine would be regarded as an act of invasion.

The historian, Martin, says: "On the bayou des Lauriers (Laurel Creek), six miles southwest by south from the town of Natchitoches on Red River, and fifteen miles from the Adayes, where the road to Nacogdoches crosses the bayou, the French had placed leaden plates on a tree on each side of the road, with an inscription expressing that the spot was the boundary between the French and Spanish dominions, without indicating the continuance of the line on either side. Similar plates were also fixed at Yattassees, a village of the Nadoca Indians, fifty leagues northwest of Natchitoches. The boundary line from bayou des Lauriers to the sea was never run, and each freely claimed much more than the other was willing to allow. The Spaniards contended that the line was to be run due south, in which case it would strike the sea near the river Curcosson (Calcasieu?)."*

It was about this time that Lieut. Zebulon M. Pike was sent by the government to explore the headwaters of the Red and the Arkansas rivers, but getting too far to the westward he was captured by the Spanish, taken to Santa Fe, and later to Chihuahua,

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* History of Louisiana: Martin

where all his papers were taken from him, and he was sent back to Natchitoches.* The Spanish claimed all the territory at the head of the rivers Red and Arkansas, but this was denied by the Americans. When captured, however, he was on one of the western branches of the Rio del Norte, a manifest invasion of Spanish territory. It was at this time, also, that General Wilkinson became fully apprised of the designs of Aaron Burr if he had not been before. He made immediate preparations to strengthen all points on the Mississippi and in Louisiana that would most likely feel the first blows should such an expedition be sent down the river. The effects in New Orleans reached the proportions of a panic. Several prominent men there became more or less identified with Burr's plans without knowing of their real significance. The dissipation of the gaudy dreams of Burr in smoke, soon quieted the commotion down the river.

The conspiracy of Aaron Burr in 1806 7 was made possible by, and grew from, the presumed bitterness of the western people for the Spanish of Louisiana, their feelings of resentment toward the people of the Atlantic states, and the immunity offered against interference among the scattered settlements of the west.* Undoubtedly, the whisky insurrection of western Pennsylvania further indicated to the mind of Aaron Burr that, if the western people could be provided with competent leadership, and be convinced of probable success, they would join such a movement. It was developed that he had two distinct objects: 1. To separate the west from the east by the Alleghany mountains; 2. To seize New Orleans, plunder the bank there, provide his forces with arms and military stores and undertake the conquest of Mexico. It may be said that he had a third object, which he used as a blind to deceive the officers of the government and secure followers: "The settlement of a pretended purchase of a tract of country on the Washita, claimed by Baron Bastrop." His protestations of honorable intentions and his ability and prominence won many to his side, but as soon as his real purpose was revealed they one by one left him until adventurers and boys were almost his only followers. He misjudged the character of the western people, and believed they were bound to separate themselves from the Atlantic states. There had been a time when the west might have joined such a man and such a movement. They would not have done it because they loved the East less, but because they loved their rights to navigate the Mississippi more. But now things were

* American State Papers.

vastly different: their rights to the sea were undisputed, and their estrangement from the East had been bridged by the cession of Louisiana. So that Colonel Burr could find no sufficient following for such a movement. The western people did not wish to see the Union dismembered. His principal design was to unite all of the country west of the Alleghanies and east of the Rocky mountains into one splendid empire, the capital and metropolis of which should be New Orleans.

When his designs for a western empire dissolved in mist and dreams, he promptly turned his attention to the conquest of Mexico. He could not return to the Atlantic states, where he was practically ostracised and persistently excoriated for the killing of Alexander Hamilton. He therefore sought for a home and a country, and while doing so thought that his deserts merited his becoming the monarch of the kingdom he should set up in the land of the Montezumas. He made preparations at the falls of the Ohio (Louisville)—building boats, collecting stores and recruiting a motley company of border ruffians and adventurers, but was checked by the governors of Ohio and Kentucky, under orders from the government; and when he finally departed down the rivers late in 1806 his fleet, which he had boasted would carry an army of from seven thousand to twelve thousand men, consisted of ten boats and about one hundred restless and disaffected persons, very few of whom were aware of his real intentions. He was arrested in Mississippi territory, and his trial for treason and other high crimes and misdemeanors is well known to historians. At one time New Orleans, Natchez, and, in fact, all of the lower country were in a panic, the reports conveying the startling information that a large army was descending the rivers to capture the whole country. Cowles Mead, secretary to the acting secretary of state of Mississippi territory, in a letter to the secretary of war, under date of January 19, 1807, said, "Thus, sir, this mighty alarm, with all its exaggerations, has eventuated in nine boats and one hundred men, and the major part of these are boys, or young men just from school. Many of their depositions have been taken . . . but they bespeak ignorance of the views or designs of the colonel. I believe them really ignorant and deluded." The only effect the movement had on Louisiana was to frighten the people and thus oblige the authorities to call out the militia to repel the expected and dreaded army of invaders.

After the year 1808 all official communication between Spain and the United States ceased, principally by reason of the stupendous war raging in Europe. The former was soon

involved in the struggle, and her very existence was seriously threatened by the ambition of France. She not only took no steps to continue the negotiations for a settlement of the differences with the United States, but left the two Floridas almost wholly to shift for themselves. They thus became filled with adventurers and law-breakers, were soon a source of intense annoyance to the United States, and in the end involved the border in a bloody Indian war. The lawlessness in West Florida became so rampant that the people themselves finally took matters into their own hands and established their independence.

CHAPTER VIII

The Florida and the Texas Boundaries, 1808-1821

OFFICIAL communication between Spain and the United States was not resumed until Napoleon had been crushed at Waterloo and the former Spanish monarchy had been restored. But in the meantime, important events had occurred in the two Floridas and in the other Spanish American possessions. During the bondage of Spain to Napoleon, the Floridas, left to themselves, had become the prey of adventurers and factions, until their occupation by the United States seemed absolutely necessary to prevent their becoming a menace to the lives and property of all the citizens of the latter living within a hundred miles of the border. The lawlessness in all the gulf ports became so great, that piracy gained a dangerous foothold in several places so as seriously to threaten all commercial intercourse on the gulf. It was learned a little later that the pirates and persons little better than pirates could muster one thousand fighting men at Galveston Island. At New Orleans there congregated all the elements opposed in any way to the government of Spain; and from that city many of the movements, despite the proclamation of the president* to terminate the evil, found either a complete or a partial encouragement and equipment to invest and occupy the Spanish American provinces, including the Floridas. Aside from this proclamation and earnest efforts of the government to check all hostile movements against Spain, nothing was done by congress until the people established an independent government in West

* See Messages and Papers of the Presidents.

Florida and until it became evident that Great Britain would probably take possession of one or both of the provinces. What followed is shown in subsequent pages.

"A DECLARATION OF THE REPRESENTATIVES OF THE PEOPLE OF WEST FLORIDA IN CONVENTION ASSEMBLED.

"It is known to the world with how much fidelity the good people of this territory have professed and maintained allegiance to their legitimate sovereign while any hope remained of receiving from him protection for their property and lives. Without making any unnecessary innovation in the established principles of the Government, we had voluntarily adopted certain regulation in concert with our First Magistrate for the express purpose of preserving this territory and showing our attachment to the Government which had heretofore protected us. This compact which was entered into with good faith on our part, will forever remain an honorable testimony of our upright intentions and inviolable fidelity to our King and parent country, while so much as a shadow of legitimate authority remained to be exercised over us. We sought only a speedy remedy for such evils as seemed to endanger our existence and prosperity, and were encouraged by our Governor with solemn promises of assistance and co-operation. But those measures which were intended for our preservation he has endeavored to pervert into an engine of destruction by encouraging in the most perfidious manner the violation of ordinances sanctioned and established by himself as the law of the land. Being thus left without any hope of protection from the mother country, betrayed by a Magistrate whose duty it was to have provided for the safety and tranquillity of the people and Government committed to his charge and exposed to all the evils of a state of anarchy which we have so long endeavored to avert, it becomes our duty to provide for our own security as a free and independent State, absolved from all allegiance to a Government which no longer protects us.

"We, therefore, the representatives aforesaid, appealing to the Supreme Ruler of the world for the rectitude of our intentions, do solemnly publish and declare the several districts composing this territory of West Florida to be a *free and independent State*; and that they have a right to institute for themselves such form of Government as they may think conducive to their safety and happiness; to form treaties; to establish commerce; to provide for their common defence; and to do all acts which may of right be

done by a sovereign and independent nation; at the same time declaring all acts within the said territory of West Florida after this date, by any tribunal or authorities not deriving their powers from the people, agreeably to the provisions established by this convention, to be null and void; and calling upon all foreign nations to respect this our declaration, acknowledging our independence, and giving us such aid as may be consistent with the laws and usages of nations. This declaration, made in convention at the town of Baton Rouge on the 26th day of September, 1810, we the representatives in the name aforesaid and on behalf of our constituents, do hereby solemnly pledge ourselves to support with our lives and fortunes."

"By order of the Convention: "JOHN RHEA, President.
ANDREW STEELE, Secretary."*

After thus adopting their declaration of independence, the following communication was sent the same day to the governor of Mississippi territory, David Holmes: "We, the delegates of the people of this State, have the honor to enclose to you an official copy of their act of independence, requesting that it may be forthwith transmitted by you to the President of the United States, with the expression of their most confident and ardent hope that it may accord with the policy of the Government, as it does with the safety and happiness of the people of the United States, to take the present Government and people of this State under their immediate and special protection as an integral and inalienable portion of the United States." Governor Holmes was requested by the president of this convention to transmit the following communication to the secretary of state at Washington:

"That the commonwealth of Florida might be immediately acknowledged and protected by the Government of the United States as an integral part of the American Union; that owing to their weak and unprotected situation they desired such an acknowledgment without delay, in the absence of which, for their own support, they would be obliged "to look to some foreign Government." In order to procure such protection they offered the following considerations: 1st, The Government of the United States, in their instructions to the envoys extraordinary at Paris in March, 1806, authorized the purchase of East Florida, directing them at the same time to engage France to intercede with the cabinet of Spain to relinquish any claim to the territory

* American State Papers.

which now forms this commonwealth. 2d, In all diplomatic correspondence with American ministers abroad the Government of the United States have spoken of West Florida as a part of the Louisiana cession. They have legislated for the country as a part of their own territory, and have deferred to take possession of it in expectation that Spain might be induced to relinquish her claim by amicable negotiation. 3d, The American Government has already refused to accredit any minister from the Spanish Junta, which body was certainly more legally organized as the representative of the sovereignty than that now called the regency of Spain. Therefore, the United States cannot but regard any force or authority emanating from them with an intention to subjugate us, as they would an invasion of their territory by a foreign enemy. 4th, The Emperor of France has invited the Spanish Americans to declare their independence rather than remain in subjection to the old Spanish Government; therefore an acknowledgment of our independence by the United States could not be complained of by France or involve the American Government in any contest with that Power. 5th, Neither can it afford any just cause of complaint to Great Britain, although she be the ally of Spain, that the United States should acknowledge and support our independence, as this measure was necessary to save the country from falling into the hands of the French exiles from the island of Cuba, and other partisans of Bonaparte who are the eternal enemies of Great Britain."

It was then stated that should the United States return a favorable reply to this request, it must be upon the agreement that West Florida should be admitted in due time to the federal Union either as an independent state, or as a territory of the United States, or "to be united with one of the neighboring territories or a part of one of them in such manner as to form a State." A preference was expressed to be annexed to the island of New Orleans, should the latter course be pursued by the United States. Other requests were made concerning lands, embargo and non-intercourse laws, moneys arising from the sale of lands, the pardon of deserters, and a loan of one hundred thousand dollars from the United States.

This proceeding on the part of the people of West Florida to form an independent government from territory which was claimed by the United States, was in its nature revolutionary, notwithstanding that the convention requested an immediate annexation to the federal government. It was therefore impossible for

the president to recognize as lawful the acts of the convention, because by so doing he would expose the government either to the absurdity of sanctioning the revolt of a portion of the United States and of approving its proceedings of independence and of subsequent application for admission into the Union of which they were already a part, or to the necessity of admitting that the people of West Florida, being subjects of Spain, had the right to declare their independence from Spain, owing to wrongs and insecurity, and had the right to form a separate government and apply for admission into the federal Union. As it was out of the question for the United States to renounce their claims to West Florida, the president was under the necessity of disregarding the acts of the convention, yet at the same time was also under the necessity of immediately taking possession of that province, or see it remain independent or become a part of some foreign power. He therefore promptly issued the following proclamation:*

"A PROCLAMATION BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

"Whereas the territory south of the Mississippi Territory and eastward of the river Mississippi and extending to the river Perdido, of which possession was not delivered to the United States in pursuance of the treaty concluded at Paris on the 30th of April, 1803, has at all times, as is well known, been considered and claimed by them as being within the colony of Louisiana conveyed by said treaty in the same extent that it had in the hands of Spain and that it had when France originally possessed it: And, whereas, the acquiescence of the United States to the temporary continuance of the said territory under the Spanish authority was not the result of any distrust of their title, as has been particularly evinced by the general tenor of their laws and by the distinction made in the application of those laws between that territory and foreign countries, but was occasioned by their conciliatory views and by a confidence in the justice of their cause and in the success of candid discussion and amicable negotiation with a just and friendly Power: And, whereas, a satisfactory adjustment, too long delayed without the fault of the United States, has for some time been entirely suspended by events over which they had no control: And, whereas, a crisis has at length arrived subversive of the order of things under the Spanish authorities,

* American State Papers.

whereby a failure of the United States to take the said territory into its possession may lead to events ultimately contravening the views of both parties, whilst in the meantime the tranquillity and security of our adjoining territories are endangered and new facilities given to violaters of our revenue and commercial laws and of those prohibiting the introduction of slaves: Considering, moreover, that under these peculiar and imperative circumstances a forbearance on the part of the United States to occupy the territory in question and thereby guard against the confusion and contingencies which threaten it, might be construed into a dereliction of their title or an insensibility to the importance of the stake: Considering that in the hands of the United States it will not cease to be a subject of fair and friendly negotiation and adjustment: Considering, finally, that the acts of Congress, though contemplating a present possession by a foreign authority, have contemplated also an eventual possession of the said territory by the United States and are accordingly so framed as in that case to extend in their operation to the same:

"Now be it known, that I, James Madison, President of the United States of America, in pursuance of these weighty and urgent considerations, have deemed it right and requisite that possession should be taken of the said territory in the name and behalf of the United States. William C. C. Claiborne, Governor of the Orleans Territory, of which the said territory is to be taken as part, will accordingly proceed to execute the same and to exercise over the said territory the authorities and functions legally appertaining to his office. And the good people inhabiting the same are invited and enjoined to pay due respect to him in that character, to be obedient to the laws, to maintain order, to cherish harmony and in every manner to conduct themselves as peaceable citizens, under full assurance that they will be protected in the enjoyment of their liberty, property and religion."

"Washington, October 27, 1810."

This proclamation was immediately followed by an order from the department of state to Gov. W. C. C. Claiborne of Orleans territory, under date of October 27, 1810, to take possession of West Florida "in the name and in behalf of the United States;" to print in English, French and Spanish the president's proclamation above and circulate it throughout the territory; to act with his forces in conjunction with Governor Holmes of Mississippi Territory; to organize the militia of West Florida after taking possession; to prescribe the bounds of parishes, establish parish

courts, maintain order under the laws of Orleans Territory, afford security to the inhabitants, "and to place them as far as may be on the same footing with the inhabitants of the other districts under your authority." It was ordered that, should the Americans encounter opposing forces, the troops on the Mississippi would assist in the execution of the order of occupation. In addition the militia of Orleans and Mississippi territories were to be drawn upon by the two governors in case of necessity. Governor Claiborne was directed to transmit copies of the president's proclamation to the several governors of the neighboring Spanish provinces, and to draw for reasonable and necessary expenses upon the United States government in any amount not exceeding twenty thousand dollars. In conclusion Governor Claiborne was told that "from the confidence which the President justly has in your judgment and discretion, he is persuaded that in the execution of this trust, as delicate as it is important, your deportment will be temperate and conciliatory. Such a line of conduct towards the inhabitants is prescribed as well by policy as by justice."

In a communication of the state department to Governor Holmes of Mississippi Territory, dated November 15, 1810, it was stated that "the right of the United States to the territory of West Florida as far as the river Perdido was fairly acquired by purchase and has been formally ratified by treaty. The delivery of possession has indeed been deferred, and the procrastination has been heretofore acquiesced in by this Government from a hope patiently indulged that amicable negotiation would accomplish the equitable purpose of the United States. But this delay which proceeded only from the forbearance of the United States to enforce a legitimate and well-known claim, could not impair the legality of their title; nor could any change in the internal state of things without their sanction howsoever brought about vary their right. It remains as perfect of course as it was before the interposition of the convention. And the people of West Florida must not for a moment be misled by the expectation that the United States will surrender for their exclusive benefit what had been purchased with the treasure and for the benefit of the whole. The vacant land of this territory, thrown into common stock with all the other vacant land of the Union, will be a property in common for the national uses of all the people of the United States. The community of interests upon which this Government invariably acts, the liberal policy which it has uniformly displayed towards the people of the territories (a part of which policy has ever been

a just regard to honest settlers), will nevertheless be a sufficient pledge to the inhabitants of West Florida for the early and continued attention of the Federal Legislature to their situation and their wants. . . . You will, however, keep in mind that the President cannot recognize in the convention of West Florida any independent authority whatever to propose or to form a compact with the United States."*

The Spanish governor of West Florida, Vicente Folch, addressed a letter under date of December 2, to the secretary of state, complaining in severe terms of the acts of the party under the command of Reuben Kemper, of the proceedings of the inhabitants of Baton Rouge in taking possession of other districts of the province, and of the general disturbance prevailing. He stated that he had "decided on delivering this province to the United States under an equitable capitulation, provided I do not receive succor from the Havana or Vera Cruz during the present month, or that his Excellency the Marquis of Someruelos (on whom I depend) should not have opened directly a negotiation on this point. The incomprehensible abandonment in which I see myself and the afflicted situation in which this province sees itself reduced not only authorize me but force me to have recourse to this determination, the only one to save it from the ruin which threatens it. The United States are also authorized to accept it. . . . The United States who profess the exercise of equity cannot exempt themselves from taking part with the party unjustly oppressed. In this belief I recur to its Executive, through the medium of your excellency, supplicating him that he will be pleased to send orders to the commandant of Fort Stoddert, that he should assist me with the troops which he has under his orders for the purpose of forcing the party under the command of Reuben Kemper to retire within the limits of the district of Baton Rouge, intimating to him that if in future he should repeat his incursions in the district of Mobile and Pensacola, the troops of the United States, joined to the Spanish troops, will use force to keep them back. These districts have the more reason to expect from the rectitude of the United States the assistance which I ask, as the party which Kemper commands has been recruited, armed and provisioned within the limits of their sovereignty. At the same time, if my proposition is accepted, orders may be given authorizing some person to treat with me for regulating the evacuation of the province and what ought to

* American State Papers.

precede it." He also wrote to the same effect to Col. John McKee, commander of Fort Stoddert, and revealed therein his great concern to treat with the United States for the evacuation of the province. At the same time he admitted his inability to cope successfully with the situation.

On December 5, 1810, President Madison sent to congress the following communication: "Among the events growing out of the State of the Spanish monarchy, our attention was imperiously attracted to the change, developing itself in that portion of West Florida, which, though of right appertaining to the United States, had remained in the possession of Spain, awaiting the result of negotiations for its actual delivery to them. The Spanish authority was subverted, and a situation produced, exposing the country to ulterior events, which might essentialy affect the rights and welfare of the Union. In such a conjecture, I did not delay the interposition required for the occupancy of the territory west of the river Perdido, to which the title of the United States extends, and to which the laws, provided for the Territory of Orleans, are applicable. With this view, the proclamation, of which a copy is laid before you, was confided to the Governor of that territory, to be carried into effect. The legality and necessity of the course pursued, assure me of the favorable light in which it will present itself to the Legislature; and of the promptitude with which they will supply whatever provisions may be due to the essential rights and equitable interests of the people thus brought into the bosom of the American family."* But congress did not act with the promptitude expected by the president. In fact it was more than a year before any positive order concerning the Floridas was made by congress.

In the senate of the United States, on the 18th of December, 1810, Mr. Giles of Virginia, chairman of the special committee appointed for that purpose, reported a bill, from which the following is an extract: "That the Territory of Orleans, as described by an act, passed the 26th day of March, 1804, entitled, 'An act erecting Louisiana into two territories, and providing for the temporary government thereof,' shall be deemed, and is hereby declared, to extend to the river Perdido; and to include all that territory south of the Mississippi Territory, and eastward of the river Mississippi, to the said river Perdido, according to the provisions of the treaty, concluded at Paris, between the United States and France, on the 30th of April, 1803." On December 21,

* Messages and Papers of the Presidents.

a motion by Mr. Lloyd, of Massachusetts, to refer the bill to a committee "with instructions to report their opinion on the title of the United States to the territory in question and the grounds on which that opinion may be founded," was lost, yeas 5, nays 17. A motion to postpone the consideration of the bill was negatived. Mr. Horsey, of Delaware, moved, "that the President of the United States be requested to cause to be laid before the Senate, all the documents, papers, or other evidences in his possession, relating to the title of the United States to the territory south of the Mississippi Territory, and eastward of the river Mississippi to the river Perdido and to the boundaries of the said territory," but the motion was lost, yeas 7, nays 13. It was evident that a majority of the senators at this time were determined to support the bill to extend the territory of Orleans over West Florida as far as the Perdido, and were not willing to be thwarted nor delayed in this intention.

Undoubtedly, the president had expected to be supported by congress in thus taking possession and holding West Florida, and the bill before the senate was designed to sanction his proceedings. A long and interesting debate succeeded the attempts to postpone the bill, or otherwise defeat its object; but as the subject at odds was the right of the United States to West Florida as a part of Louisiana, and as the arguments on that subject have been given before in these pages, they will not be repeated. The friends of the administration argued that as the territory was embraced in the cession of Louisiana, the president had the right to occupy and hold it. The opposition maintained that the United States did not possess a good title to West Florida, and the conclusion was summed up by Mr. Horsey in the following language: "Upon the whole, sir, I have not been able to discover the shadow of authority, on the ground of which the President issued this proclamation (to occupy West Florida). He has recited none, amidst all his recitals, and none appears to me but his own mere will and pleasure. The act I therefore cannot view in any other light than an unwarranted assumption of power and a violation of the Constitution." But this was not the view of a majority of the senators, unless it may be conceded that, having such views, they were determined to prevent Great Britain from taking possession of West Florida, and to make the most of the claims under which the United States declared its right to occupy that province. Later it was seen to be unnecessary and probably imprudent for congress to make any formal declaration in regard to West Florida. It was thought best to leave the president in

possession of the province under the claim that the United States had the right to occupy that territory by the cession of Louisiana.

The bill for the admission of Louisiana to statehood became a storm center at this time. At first the boundaries were defined as follows: "Beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands, to the thirty-second degree of latitude, thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the southern boundary of the Mississippi Territory; thence along the said boundary line to Pearl river; thence down the western bank of the said river to Lake Borgne; thence along the middle of said lake to the Gulf of Mexico; thence bounded by the said gulf to the place of beginning; . . . Provided, however, that the Government of the United States hereby retains the power of altering, in any manner it may hereafter deem proper, the limits of all that portion of the said described territory which lies east of the river Mississippi and the island of New Orleans." This language was amended and otherwise changed many times by congress, until finally all reference to the territory east of the Mississippi, excepting the island of New Orleans, was omitted from the bill. This omission in no way prejudiced the claims of the United States to West Florida.

Thus the bill to extend the territory of Louisiana eastward to the Perdido was merged into the one to admit that province into the Union, and finally the provision to embrace West Florida therein was wholly omitted, without prejudicing the rights of the United States. This was expert juggling, or, to use the language of diplomacy, profound and prudent statesmanship; because, while accomplishing the occupancy, no cause was given either Spain or Great Britain to declare war, those nations at that time being allies. But the proceedings in congress were long, erratic, brilliant, and on the whole wise and dignified. The bill to extend the territory of Orleans over West Florida was first read in the senate in secret session January 7, 1811; a motion to print the bill for the use of the senate was lost, yeas 14, nays 16. Another motion to print one copy for the use of each senator and to adopt necessary means to keep the proceedings secret was lost, yeas 7, nays 23. At first the language of the bill was emphatic—that West Florida should be attached to the territory of Orleans. Later, that design was

dropped, the territory was admitted without West Florida, and the bill was so altered as to permit the president under certain contingencies to occupy the latter. In fact, this bill was altogether different from the original.

Under date of December 15, the British minister at Washington, "without presuming to discuss the validity of the title of the United States to West Florida," expressed his deep regret in seeing "that part of the President's message to Congress in which the determination of this Government to take possession of West Florida is avowed." He asked, "May it not be asked why that province could not have been as fairly a subject of negotiation and adjustment in the hands of the Spaniards, who possess the actual sovereignty there, as in the hands of the Americans, who to obtain possession must begin by committing an act of hostility towards Spain. But it may be said that the Spanish forces in Mexico, in Cuba, or in Pensacola, are unequal to quell the rebellious association of a band of desperadoes who are known here (at Washington) by the contemptuous appellation of land-jobbers. . . . The act, consequently, of sending a force to West Florida to secure by arms what was before a subject of friendly negotiation, cannot, I much fear, under any palliation be considered as other than as an act of open hostility against Spain." He was therefore "induced to request in answer such explanation on the subject as will at once convince His Majesty's Government (England's) of the pacific disposition of the United States towards His Majesty's allies, the Spaniards." Mr. Smith, secretary of state, replied "that although it is sufficiently evident from the face of the documents before the public that no hostile or unfriendly purpose is entertained towards Spain, the only Power known to the United States in the transaction, yet our functionary at London has been enabled to give to your Government whatever explanations may comport with the frankness and the spirit of conciliation which have been invariably manifested on the part of the United States."*

It was provided in the bill admitting Louisiana as a state, passed by congress in January, 1811, "That said state shall be composed of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, now contained within the limits of the Territory of Orleans, except that part lying east of

* American State Papers.

the river Iberville and a line to be drawn along the middle of the lakes Maurepas and Pontchartrain to the ocean." In using this language and in making this provision, congress did not disclaim its right to the possession of West Florida, but simply honored the pretension of Spain, and postponed the settlement of mutual rights to some future day. During all the period when Spain was helpless in the grasp of Napoleon, this was the course invariably pursued by the United States. While in every way taking pains to make clear and public the claims of the United States, no hostile act against Spain was countenanced. Even the sending of troops into the Floridas was done as well to protect the interests of Spain as of those of the United States.

In January, 1811, President Madison communicated to congress that, inasmuch as a recent order of the British government had contemplated taking possession of that portion of West Florida claimed by the United States, and inasmuch as no information on that score had been sent to the United States by Great Britain that such occupation was contemplated, "I recommend to the consideration of Congress the seasonableness of a declaration that the United States could not see, without serious inquietude, any part of a neighboring territory, in which they have in different respects so deep and so just a concern, pass from the hands of Spain into those of any other foreign Power. I recommend to their consideration also the expediency of authorizing the Executive to take temporary possession of any part or parts of the said territory, in pursuance of arrangements which may be desired by the Spanish authorities, and for making provision for the government of the same during such possession. The wisdom of Congress will at the same time determine how far it may be expedient to provide for the event of a subversion of the Spanish authorities within the territory in question and an apprehended occupancy thereof by any other foreign Power."*

In response to this communication, an act of congress approved January 15, 1811, to the following effect was passed. "That the President of the United States be and he is hereby authorized to take possession of and occupy all or any part of the territory lying east of the river Perdido and south of the State of Georgia and the Mississippi Territory, in case an arrangement has been, or shall be made with the local authority of the said territory for delivering up the possession of the same, or any part thereof to the United States, or in the event of an attempt to occupy the said

* Messages and Papers of the Presidents.

territory or any part thereof by any foreign Government; and he may for the purpose of taking possession and occupying the territory aforesaid and in order to maintain there the authority of the United States, employ any part of the army and navy of the United States which he may deem necessary."* The sum of one hundred thousand dollars was appropriated to pay the expenses of this movement, to be used at the discretion of the president. Should such territory be occupied as above provided, he was empowered to form a temporary government therein and to appoint the necessary officers. By an act approved March 3, 1811, it was provided that the above act should not be printed nor published until the end of the next session of congress.

In compliance with the provisions of this act, the president on January 26, 1811, appointed Gen. George Matthews and Col. John McKee commissioners to repair "with all possible expedition" to the Floridas and when there to be governed in their proceedings by the condition of affairs. "Should you find Governor Folk or the local authority existing there inclined to surrender in an amicable manner the possession of the remaining portion or portions of West Florida now held by him in the name of the Spanish monarchy, you are to accept in behalf of the United States the abdication of his or of the other existing authority and the jurisdiction of the country over which it extends. And should a stipulation be insisted on for the re-delivery of the country at a future period, you may engage for such re-delivery to the lawful sovereign." The commissioners were authorized to guarantee all the civil rights of the inhabitants, and generally to take control of affairs, all subject to a future settlement with Spain. "Should you discover an inclination in the Governor of East Florida or in the existing local authority amicably to surrender that province into the possession of the United States, you are to accept it on the same terms that are prescribed by these instructions in relation to West Florida. And in case of the actual appearance of any attempt to take possession by a foreign Power, you will pursue the same effective measures for the occupation of the territory and for the exclusion of the foreign force as you are directed to pursue with respect to the country west of the Perdido, forming at this time the extent of Governor Folk's jurisdiction. But should the arrangement contemplated by the statute not be made, and should there be room to entertain a suspicion of an existing design in any foreign Power to occupy

* Annals of Congress.

the country in question, you are to keep yourselves on the alert, and on the first undoubted manifestation of the approach of a force for that purpose, you will exercise with promptness and vigor the powers with which you are invested by the President to pre-occupy by force the territory to the entire exclusion of any armament that may be advancing to take the possession of it. . . . If in the execution of any part of these instructions you should need the aid of a military force, the same will be afforded you upon your application to the commanding officer of the troops of the United States on that station, or to the commanding officer of the nearest post, in virtue of orders which have been issued from the War Department. . . . If Governor Folk should unexpectedly require and pertinaciously insist that the stipulations for the re-delivery of the territory should also include that portion of the country which is situated west of the river Perdido, you are in yielding to such demand only to use general words that may by implication comprehend that portion of country; but at the same time you are expressly to provide that such stipulation shall not in any way impair or affect the right or title of the United States to the same."*

In the subsequent steps taken by General Matthews, he exceeded his authority and employed force in occupying portions of East Florida, much to the annoyance of the government. As a consequence, his authority was revoked and Gov. D. B. Mitchell of Georgia was appointed in his stead to carry into effect the provisions of the congressional acts. He was directed to restore to Spain Amelia island and other portions of East Florida taken by General Matthews. In May he was instructed that, inasmuch as the act of congress "made it the duty of the President to prevent the occupation of East Florida by any foreign Power, it follows that you are authorized to consider the entrance or attempt to enter especially under existing circumstances of British troops of any description as the case contemplated by the law and to use the proper means to defeat it."

Early in July, 1811, Mr. Foster, the British minister at Washington, requested a further explanation of the "measures pursued by the United States for the military occupation of West Florida.' He referred to the act of congress concerning that province and the proceedings of the president, and declared that they were "so many direct and positive proofs that the Government of America is prepared to subject the province of West Florida to the authority of the United States." He observed that England "is still willing to hope that the American Government

has not been urged to this step by ambitious motives or by a desire of foreign conquest and territorial aggrandizement," and concluded with the statement that he was "commanded in the event of its appearing on my arrival in this city that the United States still persevere by menaces and actual demonstration to claim the military occupation of West Florida notwithstanding the remonstrances of His Majesty's chargé des affaires and the manifest injustice of the act, to present to you the solemn protest of His Royal Highness in the name and on the behalf of His Majesty against an attempt so contrary to every principle of public justice, faith and national honor and so injurious to the alliance subsisting between His Majesty and the Spanish nation."*

Mr. Monroe replied that "although the President cannot admit the right of Great Britain to interfere in any question relating to that province (West Florida), he is willing to explain in a friendly manner the consideration which induced the United States to take the step complained of." He briefly reviewed the situation existing between the United States and Spain: That the latter had refused to settle or negotiate the claims for indemnities from spoliations and for damages from the suppression of the deposits at New Orleans; that while this refusal would alone have been sufficient cause for war and while any European country would have made it the pretext for war, the United States had sought for peaceable methods of settlement until the positive refusal of Spain to negotiate had forced the government to consider other means of securing satisfaction; that above and beyond all this the United States had an undoubted right to West Florida, having secured it as a part of Louisiana; that their forbearance in not taking possession in 1803 did not waive their right to the province; that while well grounded in their right they had recognized the claims of Spain and had pressed for a settlement through friendly negotiation, but had been repulsed by Spain, who refused to consider the just claims of the United States; that now Spain had neglected the province and it had fallen into serious disorder; that even yet the United States took no advantage; that the inhabitants the last year, desiring protection and security had taken the government into their own hands; and that the United States in this emergency and in order to protect their rights had authorized the proceedings to take possession of the province." He concluded with the statement, "By this event the United States have acquired no new title to West

* American State Papers

Florida. They wanted none. In adjusting hereafter all the other points which remain to be adjusted with Spain and which it is proposed to make the subject of amicable negotiation as soon as the Government of Spain shall be settled, her claim to this territory may also be brought into view and receive all the attention which is due to it."

Early in September, 1811, Mr. Foster wrote again, demanding to know by what right the United States presumed to adopt measures to invade and take possession of East Florida. He called attention to the fact that Governor Matthews of Georgia was at that moment within the boundaries of East Florida, under orders of the president, and was endeavoring to treat with the inhabitants for the peaceable delivery of the province to the United States. He therefore considered it his duty "to lose no time in calling upon you for an explanation of the alarming steps which Governor Matthews is stated to be taking for subverting the Spanish authority in that country, requesting to be informed by you upon what authority he can be acting and what measures have been taken to put a stop to his proceedings."

Mr. Monroe calmly replied, repeating the grievances of the United States against Spain, and showing that the government had just cause to declare war, or to take possession of Spanish territory to recoup them for the indemnities and damages so often demanded and as often refused or avoided. He said, "The United States have considered the Government of Spain indebted to them a greater sum for the injuries above stated, than the province of East Florida can by any fair standard between the parties be estimated at. They have looked to the province for their indemnity and with the greater reason because the Government of Spain itself has countenanced it (he referred to the fact that at one time Spain was on the point of selling East Florida to the United States for a monetary consideration). That the United States have suffered their just claims to remain so long unsatisfied is a new and strong proof of their moderation as it is of their respect for the disordered condition of that Power. There is a period however beyond which those claims ought not to be neglected." It had become plainly evident to the United States that Great Britain seriously meditated taking possession of East Florida, either for herself or on behalf of Spain. Many occurrences pointed strongly to that conclusion. Under no circumstances could such a finality be permitted. Accordingly, Mr. Monroe, in order to show the attitude of the United States on the question of such an occupancy by Great Britain, made the follow-

ing plain avowal to the British minister: "Under these circumstances it would be equally unjust and dishonorable in the United States to suffer East Florida to pass into the possession of any other Power. Unjust, because they would thereby lose the only indemnity within their reach for injuries which ought long since to have been redressed. Dishonorable, because in permitting another Power to wrest from them that indemnity, their inactivity and acquiescence could only be imputed to unworthy motives. Situated as East Florida is, cut off from the other possessions of Spain, and surrounded in a great measure by the territory of the United States and having also an important bearing on their commerce, no other Power could think of taking possession of it with other than hostile views to them. Nor could any other Power take possession of it without endangering their prosperity and best interests. The United States have not been ignorant or inattentive to what has been agitated in Europe at different periods since the commencement of the present war, in regard to the Spanish provinces in this hemisphere; nor have they been unmindful of the consequences into which the disorders of Spain might lead in regard to the provinces in question without due care to prevent it. They have been persuaded that remissness on their part might invite the danger if it had not already done it, which it is so much their interest and desire to prevent. Deeply impressed with these considerations and anxious while they acquitted themselves to the just claims of their constituents to preserve friendship with other Powers, the subject was brought before Congress at its last session, when an act was passed authorizing the Executive to accept possession of East Florida from the local authorities, or to take it against the attempt of a foreign Power to occupy it, holding it in either case subject to future and friendly negotiation. This act therefore evinces the just and amicable views by which the United States have been governed towards Spain in the measure authorized by it."*

Succeeding the unauthorized acts and proceedings of Governor Matthews in East Florida, the people who had joined his cause revolted from the authority and jurisdiction of Spain, established a temporary government "to avoid confusion," took possession of the country and finally passed an act authorizing their commissioners to surrender the province to the United States. Inasmuch as they had been assured that the proceedings of Governor Matthews were authorized by the United States, "the whole plant-

* American State Papers

ing interest declared themselves free" of Spain, and asked for admission into the Union; but the States refused to recognize the revolutionists or to accept their so-called cession. Such a recognition would have been equivalent to a declaration of war against Spain. On the other hand, the United States quietly stimulated the sentiments of the revolutionists, stipulated for their protection, and otherwise prepared to take possession should Great Britain undertake to occupy the province.

Soon after the declaration of war against Great Britain in 1812, a bill authorizing the president to occupy all that part of West Florida not already in the possession of the United States and all of East Florida, passed the house of representatives, but was rejected by the senate.* As one of the objects of such bill was to prevent the British or any other foreign country from taking possession of the Floridas, and as it did not seem then that such were the immediate intentions of that of any other country, it was thought wiser by many to wait until some definite movement in that direction should appear. It was also argued that if the British had not landed in East Florida, the American forces there should be withdrawn; or on the other hand if the British had landed any troops in that province, the American forces should occupy and hold East Florida as well as West Florida. It will be noticed that the act of January 15, 1811, did not authorize the president to occupy East Florida, unless certain arrangements could be made with the inhabitants for gaining possession, or unless an attempt should be made to occupy it by some foreign power. This made it necessary to disavow the proceedings of Governor Matthews, but it also permitted the president to enter East Florida for the purpose of conducting negotiations with the view of getting possession, and such course was pursued with considerable force and all that was intended was accomplished, namely, the obstruction of any attempt to occupy the territory by Great Britain.

In a resolution adopted December 22, 1812, the United States senate requested the president to lay before that body such information as he had secured of the intentions of the enemy (Great Britain) to take possession of East Florida, of the disposition of the people there to be received under the protection of the United States, of any recent negotiations with Spain looking to a settlement of the differences between the two countries, of any proceedings of the people of East Florida to have that province ceded

* Annals of Congress.

to the United States or for its surrender to or occupancy by the United States, and of the relations subsisting between the two countries respecting East Florida.* In response to this request the senate was informed of the condition of affairs. In both house and senate the project of taking possession of East Florida began to be discussed with intense sincerity and the proceedings of January resulted. A similar request to the above was made by the senate January 18, 1813, and met with such response that soon afterward the enactment to take possession of East Florida under certain contingencies was deemed premature, and the project to take possession in any event was considered and discussed without resulting in any definite action.

After war had actually begun between Great Britain and the United States and the powerful navy of the latter had blockaded the Atlantic and the gulf ports and had even landed troops in some of the towns, congress did no longer delay an act to occupy West Florida and establish the government therein, when it seemed certain that, unless such course was taken, England was sure to take possession of the province. Congress did not yet feel justified in taking possession in a similar fashion of East Florida, though the American forces remained in and around that territory, prepared to repel any advance or occupancy of that province by England or any other foreign Power. By the act of February 12, 1813, it was provided "that the President be and he is hereby authorized to occupy and hold all that tract of country called West Florida which lies west of the river Perdido and now in possession of the United States."† The president was authorized to use the army and navy for this purpose; and the sum of twenty thousand dollars was appropriated to defray the expenses. The act of January 15, 1811, had authorized the president to occupy West Florida, providing peaceable possession could be obtained from the inhabitants. Under this act portions of the province had been occupied; but a considerable portion still remained in the possession of the Spanish authorities, who refused to deliver the posts occupied by them. The act of February 12, 1813, authorized the president to take possession of the remainder of the province regardless of the remonstrances of Spain. This act was deemed imperative by reason of the manifest intention of Great Britain to occupy the Gulf ports of the province; or in other words to occupy territory claimed by the United States.

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* Senate Documents.
† Annals of Congress.

No other events of great importance in relation to the Floridas occurred until the termination of the war with Great Britain. The United States remained in possession of West Florida, but had removed the troops from East Florida, as there was no longer any excuse to occupy that province. Order had been restored, the law-breakers had been shot, arrested or driven off, and the fierce savages had been reduced to subjection.

In his proclamation dated September 1, 1815, President Madison said, "Whereas, information has been received that sundry persons, citizens of the United States, or residents within the same, and especially within the State of Louisiana, are conspiring together to begin and set on foot, provide and prepare the means for a military expedition or enterprise against the dominions of Spain; . . . and for this purpose they are collecting arms, military stores, provisions, vessels and other means, and deceiving and seducing honest and well meaning citizens to engage in their unlawful enterprises, or organizing, officering and arming themselves for the same; . . . I have therefore thought fit to issue this my proclamation warning and enjoining all faithful citizens . . . to withdraw from the same without delay, and commanding all persons whatsoever engaged or concerned in the same to cease all further proceedings therein as they will answer the contrary at their peril."* He directed that all civil and military officers should be vigilant in seizing and preventing such persons from effecting such unlawful object.

After the year 1808 and until the year 1815, Spain, knowing her inability to maintain her authority in West Florida, had acquiesced in their occupation by the United States, being assured as she was by the latter that her rights would be fully respected and secured by subsequent negotiations between the two countries. However, on the 30th of December, 1815, Chevalier Luis de Onis, minister of Spain recently appointed to the United States, communicated to the authorities at Washington that, inasmuch as the diplomatic relations between the two countries had been restored, the territories of both nations should be put in the same state as they were when the official relations had been suspended in 1808; that "the part of West Florida which the United States took possession of during the glorious insurrection of Spain and have retained until this day, should be restored to His Catholic Majesty;" that the United States should at once prevent the formation of expeditions of all kinds within their borders against the Spanish pos-

* Messages and Papers of the Presidents.

sessions in the southwest; and that the United States should in no manner recognize the insurrectionary movements of the Spanish American provinces. He said, "The prompt interposition of the President would be a new proof that he is determined to put an end to the incalculable extortions and injuries which Spain has suffered for the space of seven years from the gang of adventurers who have assailed her from the bosom of this republic, and would be, finally, a sure preliminary to the removal of all the difficulties which may present themselves in the negotiations which ought to terminate all the pending discussions between the two Governments and to fix forever between them a perpetual and solid friendship. . . . The President cannot but have seen with sensibility as well, the total want of effect of his proclamation of the lenient measures which he had adopted against these criminals who boast of recognizing no law, subordination or moral principle, as the protection and support which they have received and do receive from the authorities at New Orleans contrary to his express orders."

In his reply to this communication Mr. Monroe briefly reviewed all the suspended relations between the two countries. He stated that inasmuch as the United States claimed within the limits of Louisiana the country on the coast from the river Perdido to the Rio Grande, the United States could as well demand from Spain the surrender of all that territory, as the latter could demand the surrender of the Floridas, as a preliminary to subsequent negotiations. The negotiations could be entered upon with the United States in possession as well as with Spain in possession. He said: "The United States took no measure to indemnify themselves for losses and injuries; none to guard against the occupancy of the Spanish territory by the British forces in the late war, or to occupy the territory to which the United States considered their title good, except in the instance of West Florida; and in that instance under circumstances which made their interposition as much an act of accommodation to the Spanish authority there as of security to themselves. They have also prohibited their citizens from taking any part in the war, and the inhabitants of the colonies and other foreigners connected with them from recruiting men in the United States for that purpose." After citing all the derelictions of Spain, he observed: "The conduct of your Government would have justified if it did not invite the most decisive measures on the part of the United States. The refusal to make reparation for preceding injuries or to surrender any portion of the territory in the pos-

session of Spain to which they considered their title undisputable or to accept fair and liberal propositions for the accommodation of these differences or to make a proposition of any kind for the purpose, left the United States perfectly free to pursue such course as in their judgment a just regard to the honor, rights and interests of the nation might dictate. In the condition of Spain there was nothing to excite apprehension of the consequences, whatever might be the course decided on. . . . The friendly policy which the United States have since pursued is the more conspicuous from the consideration that your Government has inflexibly maintained the unjust and hostile attitude which it then assumed, and has even added new injuries and insults to those of which I have already complained. I refer in this latter remark to the breaches of the neutrality of Spain, which her Government permitted, if it did not authorize, by British troops and British agents in Florida, and through that province with the Creeks and other tribes of Indians in the late war with Great Britain, to the great injury of the United States."

On the question of West Florida, Mr. de Onis presented the arguments previously mentioned herein upon which Spain relied to justify her claim to all of the two Floridas, and Mr. Monroe urged the position which had been assumed by the United States. The Spanish minister dwelt at length on the word "retrocession," arguing that as Spain had not received either of the Floridas from France, she therefore could not retrocede it to her. Mr. Monroe made light of the word and said, "As to the word 'retrocession,' it is evident that it was not the intention of the parties that it should have any effect whatever on the extent of the territory ceded. The import of this term is too vague and the term itself was used in a manner too casual to admit such an inference, even had there been nothing else in the treaty between Spain and France of 1800 to show that the construction you contend for is altogether inconsistent with the manifest intention of the parties. The import of this term would in my opinion be satisfied if the whole province had passed in the first instance from France to Great Britain and been conveyed afterwards by Great Britain to Spain and by Spain back again to France. In regard to France, this last conveyance would have been a 'retrocession,' as by it the territory would have been ceded back to her. It was very natural therefore that this term should be used, being applicable in the most limited sense in which it can be taken to at least nineteen-twentieths of the province and in a

qualified sense to the whole." Mr. de Onis said, "Be the interpretation which may be wished to be given to the treaty of 'retrocession' of Louisiana made between France and Spain what it may, the two Floridas can never be directly nor indirectly included in it: 1st, because these provinces being in the legitimate possession of England from the year 1763 to the year 1783, France could not cede them to Spain by the treaty of 1764—nor Spain retrocede them to France, not having received them from her, unless there should have been an article on this point, in which express and direct mention was made of the cession; and 2nd, because the two contracting parties (Spain and France) have declared in the most solemn manner, the former that she did not cede to France any part of the Floridas—the latter that she had not acquired them by the treaty of St. Ildefonso or of retrocession of 1800, nor had had the least intention to set up a claim to them. . . . The country to which you allude, extending to the Rio Bravo or del Norte, has been under the dominion of Spain, not only before and since France ceded Louisiana to His Majesty by the treaty of 1764, but from the time of the discovery and conquest of Mexico, without ever having passed by treaty to any other nation."

Mr. Monroe's argument, intentionally prepared to avoid artifice, was extremely clear, strong and convincing. The expression "with the same extent that it now has in the hands of Spain" would not have been used, would not have been necessary, had the Louisiana which was ceded extended no farther eastward than the Iberville. The expression must have meant to include West Florida, because that province was "now" embraced in the civil government of Louisiana. The statement "that it had when France possessed it" must have meant prior to 1763 when it extended to the Perdido, because France had never possessed it farther to the westward than that river. The expression "such as it should be after the treaties subsequently entered into between Spain and other states," he argued, could have been used for no other purpose than to exclude that portion of Louisiana above the thirty-first degree of north latitude, which had passed in 1783 to the United States, but which prior to 1763 had belonged to France as a part of Louisiana. Mr. Monroe declared there had never been a treaty in 1764 as claimed by Mr. de Onis. It seems that so far as the language was concerned the claims of the two countries were about equally balanced. The expressions above seem to favor the United States, but the term "retrocession"

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* American State Papers.

unquestionably favors the Spanish contention. However, it was proper that each side should present its strongest points, and this was accordingly done. In this manifest obscurity, the intentions of the parties to the retrocession were the determinating factors. Both France and Spain denied that any part of the Floridas was included in the Louisiana retroceded. While the strength of this position was recognized in the United States, there was nothing to prevent the government from pressing its claims to the utmost and employing every honorable art and argument to acquire West Florida at least, because its possession meant so much in the interests of order and security. It could mean nothing else, also, than that East Florida would eventually follow the same course. Nor was there anything to prevent the United States from pressing to the utmost its claims to the territory extending westward to the Rio Grande, when by means of such persistence better terms were likely to be secured thereby from Spain. The negotiations terminated in a diplomatic contest in which the United States had considerably the advantage by reason of proximity to the territory in dispute and the possession of a considerable portion of the Floridas. Neither is it improbable that Spain, realizing this fact and the further consideration that the claims of the United States were undoubtedly about as strong as her own, came to the unwilling conclusion, by reason of the firmness and persistence of Mr. Monroe, that unless she yielded much of what the United States claimed, the latter might be inclined to take all that was wanted without permission, leaving to the crown of Spain a course that was then to her wholly impracticable—the necessity of waging war against the United States.

After the negotiations had progressed thus far, Mr. de Onis informed the secretary of state that he did not possess full powers to treat, whereupon George W. Erving was appointed special envoy to the court of Madrid to conclude a treaty with the Spanish government. The latter upon opening negotiations at Madrid, was informed that full powers had lately been sent to Mr. de Onis at Washington. Accordingly, communications were resumed between Mr. Monroe and Mr. de Onis. The former stated that, having understood from the latter that he "would not agree to an arrangement by which Spain should cede her claims to territory eastward of the Mississippi unless the United States ceded their claims to all the territory westward of that river, and that even then your agreement would be restricted to a recommendation to your Government to adopt an arrangement to that effect, it is deemed unnecessary to make you any further proposition or to prolong the negotiation on the subject of lim-

its. I have now to request that you will have the goodness to inform me whether you are willing to enter into a convention to provide compensation for spoliations and for the injury resulting to the United States from the suppression of the deposit at New Orleans?"*

Again there seemed to be an obstruction to the proceedings, as it not only became evident that Mr. de Onis was not fully empowered to treat, but the Spanish secretary of state submitted to Mr. Erving a "project of conditions or articles of agreement" on the 17th of August, 1817, which the latter stated he could not officially consider, because the Spanish minister himself had transferred the negotiations to Washington. This "project of conditions" embraced the following points: That all questions of indemnification down to the present time should be settled; that this settlement should be effected by a commission appointed from other nations than Spain or the United States; that the said commission should decide on the damages resulting from the suppression of the deposits at New Orleans in 1802–3, "provided it is not desired to attribute to such suspension the prejudices produced by false rumors of a suspension in the navigation of the Mississippi, which never existed, and the rumors of an early rupture, which some bad intentioned persons delighted to propagate at that time in the territory of the United States, for the bad effects and prejudices resulting from such false rumors can only be attributed to the authors of them; that the king of Spain "obliges himself to employ his efforts in union with the United States to reclaim and cause to be restored to the legitimate proprietors the value of the vessels and goods which were taken from them, provided that these reclamations have not been extinguished by the said convention of 1800, as France has assured the Government of Spain in its repeated communications; that His Catholic Majesty, master of Florida, East and West, in all the extension in which he received them from England by the treaty of 1783, and which they had in possession of Great Britain before said treaty, will be willing for his part to cede them with the same extention to the United States of America, in full property and perpetual sovereignty, provided that the United States are equally disposed on their part to cede in the same form to His Catholic Majesty that part of Louisiana which is situated to the west of the Mississippi, and is the territory which lies between said river and the well-known limit which now separates and has separated Louisiana when France possessed it

* American State Papers.

before the year 1764, and even before the death of the King of Spain, Charles II., from the Spanish province called Texas; so that after these reciprocal cessions are verified, the course of the river Mississippi from its source to where it discharges into the sea, will be the only limit of the dominions of His Catholic Majesty and those of the United States," excepting that the channel Lafourche should be the dividing line at the mouth of the Mississippi; that owing to the provisions embraced in the treaty of Utrecht to the effect that Spain should never dispose of the Floridas without the consent of England, it would be necessary, should the United States desire the acquisition of those provinces, to secure the permission of that power; and that piracies and insurrections against each nation should be suppressed within the limits and authority of the other.

While stating that he had not the authority to treat fully on the lines proposed, Mr. Erving nevertheless proceeded to discuss unofficially the "project of conditions" submitted by Don Jose Pizarro. After showing the unfairness of the propositions, he stated that they would prove wholly inadmissible to the United States. Mr. Pizarro announced that he would at once dispatch full authority to Mr. de Onis at Washington to settle all questions in dispute; whereupon Mr. de Onis and Mr. Adams began anew negotiations to terminate the difficulties. It was now December, 1817. Mr. de Onis entered at once into an elaborate historical account of the growth of the Spanish provinces in the southern part of North America, contending that the possessions of Spain extended eastward to the Mississippi. He produced strong evidence that the Spanish settlements had been made eastward of the Sabine river, notably at Adaes, a short distance west of Natchitoches and that all of the country west of that river had been occupied for from one hundred to two hundred years by the missionaries and settlers of Spain. Considering that the Spanish settlements east of the river Sabine would about offset the French settlements west of the Sabine and southwest of the upper course of Red river, justice indicated that those streams should be the demarcation between Louisiana and the Spanish province of Texas. While Mr. de Onis argued for an extension of the Spanish dominions eastward to the Mississippi, he succeeded in showing little or no right to any territory east of the Sabine and north of Rio Roxo, or Red river. On the other hand, the French claims to the territory west of the Sabine were equally weak and unsound. Thus the river Sabine and the upper Red river were approximately the just and plain boundary between Louisana and Texas. It only remained to fix the exact

line. Mr. de Onis did not insist on the extension of the Spanish possessions to the Mississippi, because subsequent treaties and negotiations, he said, had placed the boundary farther to the west. To his long and numerous letters, Mr. Adams replied briefly that the subject had been so often discussed, particularly in the years 1804-6, nothing new could be learned thereby; he therefore submitted, on January 16, 1818, the following "arrangement" for the settlement of the difficulties between the two countries:*

"1. Spain to cede all her claims to territory eastward of the Mississippi.

"2. The Colorado from its mouth to its source and from thence to the northern limits of Louisiana, to be the western boundary; or to leave that boundary unsettled for future arrangement.

"3. The claims of indemnities for spoliations, whether Spanish or French, within Spanish jurisdiction, and for the suppression of the deposits at New Orleans, to be arbitrated and settled by commissioners in the manner agreed upon in the unratified convention of 1802.

"4. The lands in East Florida and in West Florida to the Perdido to be made answerable for the amount of the indemnities which may be awarded by the commissioners under this arbitration; with an option to the United States to take the lands and pay the debts, or to sell the lands for the payment of the debts, distributing the amount received equally according to the amount of their respective liquidated claims among the claimants. No grant of land subsequent to the 11th of August to be valid.

"5. Spain to be exonerated from the payment of the debts or any part of them."

In presenting this "arrangement," Mr. Adams called the attention of Mr. de Onis to the necessity of coming to some agreement at once, owing to the importance of deciding immediately whether Spain or the United States was to be held responsible for the expense of suppressing the incursions and insurrections along the boundary between Louisiana and Texas. He said: "Spain cannot expect that the United States should employ their forces for the defense of her territories, or to rescue them for her exclusive advantage from the adventurers who are projecting and in the act of executing expeditions against them from the territories without the jurisdiction of the United States. Neither can the United States permit that the adjoining territories of

* American State Papers.

Spain should be misused by others for purposes of annoyance to them."

This "arrangement" was not satisfactory to Mr. de Onis, who presented the following counter proposition:

"1. The dividing line between Louisiana and the Spanish possessions to be established in one of the branches of the Mississippi, either that of Lafourche or of the Atchafalaya, following the course of that river to its source. Or if this should be inadmissible, the western line to be established from the sea at a point between the rivers Carcassa and the Mermento or Mermentao, running thence by Arroyo Hondo till it crosses the Colorado of Natchitoches between that post and Adaes, thence northward to a point to be fixed and laid down by commissioners respectively appointed for that purpose. Spain to cede the two Floridas to the United States in full and complete sovereignty.

"2. The question of indemnities to be settled by a commission.

"3. Spain to unite with the United States in an endeavor to secure from France a settlement for the spoliations claimed.

"4. The United States to engage to prevent the insurrections along the boundary in the southwest."

This proposition was the inducement for Mr. Adams to write the strongest and lengthiest communication yet prepared in support of the contentions of the United States. He reviewed in detail all the facts of the early settlement by both France and Spain and replied to every argument that had been presented to sustain the Spanish claims. He was very careful to make no assertion which he did not support with documentary or other evidence. He ended with the following statement: "With regard to those parts of the province of Louisiana which have been incorporated within the state of that name, it is time that the discussion should cease. Forming part of the territory of a sovereign and independent State of this Union, to dispose of them is not within the competency of the Executive Government of the United States, nor will the discussion be hereafter continued. But if you have proposals to make to which it is possible for the Government of the United States to listen with a prospect of bringing them to any practicable conclusion, I am authorized to receive them and to conclude with you a treaty for the adjustment of all the differences between the two nations upon terms which may be satisfactory to both."

In his message to congress of December 2, 1817, President Monroe stated that the relations with Spain were the same as they were under his predecessor; that it had evidently been the policy of Spain to keep the negotiations concerning boundaries, etc., sus-

pended, to which the United States had acquiesced "from an amicable disposition towards Spain and in the expectation that her Government would from a sense of justice finally accede to such an arrangement as would be equal between the parties. A disposition has been lately shown by the Spanish Government to move in the negotiation, which has been met by this Government." He stated that lately an expedition from the revolting Spanish American colonies had undertaken to occupy portions of East Florida, and that "as this province lies eastward of the Mississippi and is bounded by the United States and the ocean on every side, and has been a subject of negotiation with the Government of Spain as an indemnity for losses by spoliation or in exchange for territory of equal value westward of the Mississippi (a fact well known to the world), it excited surprise that any countenance should be given to this measure by any of the (Spanish) colonies." He also communicated that a similar establishment had been made on Galveston island within territory contended to be a part of the United States under the treaty of 1803 ceding Louisiana, and that orders had been issued for the suppression of both movements or expeditions. The design of the revolting colonies was to occupy both of the Floridas and form an independent government. As this design was an intended infringement of the rights of the United States, in West Florida, at least, the revolutionists were dispersed and driven from those provinces. In his message, the president, in order to justify his course in repelling the revolutionists, stated that he had proceeded under the act of congress of January 15, 1811, which authorized him "to prevent the province of East Florida from passing into the hands of any foreign Power. It does not appear that among these itinerant establishers of republics and distributers of Florida lands there is a single individual inhabitant of the country where the republic was to be constituted and whose lands were to be thus bestowed. The project was, therefore, an attempt to occupy that territory by a foreign Power." In his message of January 13, 1818, he said: "In repelling these adventurers from these posts it was not intended to make any conquest from Spain or to injure in any degree the cause of the colonies. Care will be taken that no part of the territory contemplated by the law of 1811 shall be occupied by a foreign Government of any kind, or that injuries of the nature of those complained of shall be repeated; but this it is expected will be provided for with every other interest in a spirit of amity in the negotiation now depending with the Government of Spain."*

* Messages and Papers of the Presidents.

In March 1818, the president communicated to congress, that, inasmuch as the government of Spain had been unable, in accordance with the treaty of 1795, to keep the Indians within the boundaries of the Floridas from making repeated incursions into the territory of the United States, troops had been sent against them, but that "orders had been given to the general in command not to enter Florida unless it be in pursuit of the enemy, and in that case to respect the Spanish authority wherever it was maintained; and that he would be instructed to withdraw his forces from the province as soon as he shall have reduced that tribe to order and secured our fellow citizens in that quarter by satisfactory arrangements against its unprovoked and savage hostilities in future." He further said in November, 1818, that although the convention of 1802 had at length been ratified by Spain, no arrangement had been entered into to settle the question of boundaries. "Throughout the whole of the Floridas to which the Spanish title extends, the Government of Spain has scarcely been felt. Its authority has been confined almost exclusively to the walls of Pensacola and St. Augustine, within which only small garrisons have been maintained. Adventurers from every country, fugitives from justice, and absconding slaves have found an asylum there. Several tribes of Indians, strong in the number of their warriors, remarkable for their ferocity, and whose settlements extend to our limits, inhabit those provinces. These different hordes of people, connected together and disregarding on the one side the authority of Spain, and protected on the other by an imaginary line which separates Florida from the United States, have violated our laws prohibiting the introduction of slaves, have practised various frauds on our revenue, and committed every kind of outrage on our peaceable citizens, which their proximity to us enabled them to perpetrate. . . . In authorizing Major General Jackson to enter Florida in pursuit of the Seminoles, care was taken not to encroach on the rights of Spain. I regret to have to add that in executing this order, facts were disclosed respecting the conduct of the officers of Spain in authority there, in encouraging the war, furnishing munitions of war and other supplies to carry it on and in other acts not less marked, which evinced their participation in the hostile purposes of that combination and justified the confidence with which it inspired the savages that by those officers they would be protected. . . . An order was in consequence issued to the general in command there to deliver the posts—Pensacola, unconditionally, to any person duly authorized to receive it, and St. Marks, which is in the heart of the Indian

country, on the arrival of a competent force to defend it against those savages and their associates. In entering Florida to suppress this combination, no idea was entertained of hostility to Spain; and however justifiable the commanding general was, in consequence of the misconduct of the Spanish officers in entering S. Marks and Pensacola, to terminate it by proving to the savages and their associates that they should not be protected even there, yet the amicable relations existing between the United States and Spain could not be altered by that act alone. By ordering the restitution of the posts, those relations were preserved. By this measure so promptly taken, due respect was shown to the Government of Spain. . . . If the embarrassments of Spain prevented her from making an indemnity to our citizens for so long a time from her treasury for their losses by spoliation and otherwise, it was always in her power to have provided it by the cession of this territory. Of this her Government has been repeatedly apprised. . . . There is nevertheless a limit beyond which this spirit of amity and forbearance can in no instance be justified."*

Pending the negotiations between Mr. de Onis and Mr. Adams, the movement of General Jackson into the Floridas in pursuit of the Seminoles occurred. This met with a storm of protest from the Spanish minister who said, "General Jackson with the American forces under his command has not only violated the Spanish territory under the pretext of pursuing and chastising the Seminole Indians, but he has taken possession by force of arms of the fort and bay of St. Mark, driven the Spanish garrison from those places, and sent them as prisoners to Pensacola, the capital of West Florida. Not satisfied with this enormous outrage, he marched against the latter place, and has by open rupture and bloodshed violated the peace existing between Spain and the United States. He demanded the surrender of Pensacola as if war had been declared between the two nations; and on the refusal of the Spanish governor to surrender or deliver up the place, the American commander, availing himself of his superior force, attacked it and bombarded the castle of Barrancas, whither the Governor had retired with his small garrison and such of the inhabitants as chose to follow him. Having surrounded that fortress, he gave orders for the assault and carried it. The Governor and all his people were made prisoners of war." This complaint was made on July 8, 1818, and was followed by others in still stronger language, coupled with the demand for the restitu-

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* American State Papers.

tion of the posts taken thus by the United States forces. As soon as the object of the expedition was accomplished, the president gave orders for the surrender of the places taken. This act completely disproved the views of Mr. de Onis that the pursuit of the Seminoles was but a pretext for the occupation and conquest of the Floridas by the United States. Upon receipt of the information that orders had been issued for the restoration of the forts and towns to Spain and for the evacuation of the province by the American troops, Mr. de Onis expressed the liveliest satisfaction, and signified his anxiety to hasten the pending negotiations between the two countries. During the period under which the expedition of General Jackson was conducted, and in response to the complaint of the Spanish minister, Mr. Adams explained to him fully the reasons for the course pursued by the Americans; but with extraordinary fatuity he could not see any justification for such course, nor believe that the United States meditated other than the most hostile intentions toward the possessions of Spain.* The equitable and righteous act of evacuation greatly softened the asperity and irritability of Mr. de Onis, and made him much more pliable and reasonable in the pending negotiations.

While the negotiations were proceeding as fast as possible in the United States, communication looking to a settlement of the differences between the two countries was being held between Mr. Erving and Jose Pizarro at Madrid. They likewise reiterated the old arguments and endeavored to reach some definite arrangement. While thus engaged the American minister learned that the Spanish government was granting large tracts of land in the Floridas to prominent subjects or favorites of the crown, who at once he lost no time in acquainting the authorities at Washington with such facts, managing to secure and send copies of the grants.

The convention of August 11, 1802, between Spain and the United States, which was ratified by the latter January 9, 1804, but not by the former until July 9, 1818, provided for the appointment of a board of commissioners to meet at Madrid to settle the mutual claims of the two countries. While provision was thus made for the settlement of the claims of American citizens for damages resulting from the suppression of the deposits at New Orleans in 1802-3, none was made by this convention for the adjustment of disputed boundaries.

In a communication dated October 24, 1818, Mr. de Onis submitted the following propositions to the secretary of state: That the United States should disavow the invasion of the Floridas by

* American State Papers.

the troops under General Jackson and restore the places that had been captured; that Spain should cede the Floridas to the United States; but that all grants of land therein to the present time should not be invalidated; that the boundary between Louisiana and Texas should "begin on the Gulf of Mexico between the rivers Mermento and Calcasieu, following the Arroyo Hondo between the Adaes and Natchitoches, crossing the Red river at the thirty-second degree of latitude and ninety-third of longitude from London according to Melish's map, and thence running directly north, crossing the Arkansas, the White and the Osage rivers, till it strikes the Missouri, and then following the middle of that river to its source, so that the territory on the right bank of the said river will belong to Spain and that on the left bank to the United States. The navigation as well of the Missouri as of the Mississippi and Mermento shall remain free to the subjects of both parties."*

In replying to this proposition in a communication dated October 31, 1818, Mr. Adams said, "The right of the United States to the river Mississippi and all the waters flowing into it, and to all the territories watered by them, remains as entire and unshaken by anything now adduced by you as by anything which had ever preceded it in the discussion between the two Governments. It is established beyond the power of further controversy; nor could it answer any useful purpose to reproduce proofs which have already more than once been shown, and which remaining unimpaired must henceforth be considered by the United States as not susceptible of refutation." Mr. de Onis was told that the government had already given orders for the restoration of the places taken by General Jackson, but that the demand concerning land grants could not be acceded to by the United States, nor could the boundary between Texas and Louisiana proposed by Mr. de Onis be accepted. Mr. Adams then proposed the following boundary and stated that "I am authorized to assure you that it is to be considered as the final offer on the part of the United States:"*

"Beginning at the mouth of the river Sabine on the Gulf of Mexico; following the course of said river to the thirty-second degree of latitude; the eastern bank and all the islands in said river to belong to the United States and the western bank to Spain; thence due north to the northernmost part of the thirty-third degree of north latitude and until it strikes the Rio Roxo or Red river; thence following the course of said river to its source

*American State Papers.

touching the chain of the Snow mountains in latitude thirty-seven degrees twenty-five minutes north, longitude one hundred and six degrees fifteen minutes west or thereabouts as marked on Melish's map; thence to the summit of the said mountains and following the chain of the same to the forty-first parallel of latitude; thence following the said parallel of latitude forty-one degrees to the South Sea. The northern bank of the said Red river and all the islands therein to belong to the United States and the southern bank of the same to Spain."

He further stipulated that both countries should renounce all claims for injuries or damages, and that all land grants in the Floridas subsequent to 1802 should be null and void. However, the amount of the claims to be assumed by the United States was not to exceed five millions of dollars. He concluded by saying, "The President is deeply penetrated with the conviction that further protracted discussion of the points at issue between our Governments cannot terminate in a manner satisfactory to them. From your answer to this letter he must conclude whether a final adjustment of all our differences is now to be accomplished, or whether all hope of such a desirable result is on the part of the United States to be abandoned."

The reply of Mr. de Onis showed that the two parties were getting closer together in their negotiations. While claiming that Spain was thus making great sacrifices out of her wish to retain the friendship of the United States, he was willing to accede to the river Sabine as the western boundary of Louisiana "on condition that the same line proposed by you shall run due north from the point where it crosses the Rio Roxo (Red river) till it strikes the Missouri, and extend thence along the middle of the latter to its source, leaving to Spain the territory lying to the right and to the United States the territory lying to the left of the same." He stated that he was unauthorized to negotiate on the proposed extension of Louisiana to the Pacific ocean; that the northwestern boundary should remain open for future negotiation; that "if it should be proposed only to draw the line from the point mentioned on the Red river (Rio Roxo) somewhat obliquely (con alguna oblicuidad) to the westward of the right line due north, which I offer as the boundary of the two countries, I shall not hesitate to take upon myself the arrangement of this point, it being always understood that the proposed line shall strike the Missouri;" and that he would be willing to agree that all grants of land since January 24 last in the Floridas should be null and void.

To this letter Mr. Adams replied under date of November 30, that, inasmuch as the former propositions of the United States

concerning the western boundary were final, and inasmuch as Mr. de Onis had stated that he was unauthorized to agree on the Rio Roxo or the forty-first parallel of latitude as such boundary, "the President deems it useless to pursue any further the attempt at an adjustment of this object by the present negotiation. I am therefore directed to state to you that the offer of a line for the western boundary, made to you in my last letter, is no longer obligatory upon this Government." He therefore stated that he was ready to continue the discussion of other points of difference, and proceeded with an argument to justify the United States in pursuing the Seminoles and robbers into the Floridas and the necessity of the steps taken by General Jackson.

No answer was given to this communication until December 12, 1818, when Mr. de Onis wrote a somewhat lengthly argument in support of the position he had taken, and mildly criticized the course pursued by the United States in exacting so much from Spain. He insisted that Spain was thus making very great sacrifices in order to prove her good will for the United States; but he did not in this letter present other or modified propositions. However, on January 11, 1819, he wrote briefly, stating that he had "just received a courier extraordinary of my Government with dispatches by which I am authorized to give a greater extent to the proposals which I made to you for adjusting and terminating amicably all the subjects in dispute between the two Powers." He therefore asked to have the negotiations renewed. He wrote again January 16, and said that he was authorized to extend the northwestern boundary up the Missouri river to its source, thence to the headwaters of the Columbia, and thence down the same to the Pacific. Mr. Adams replied that this proposition was not acceptable, and that the government would do nothing but repeat the proposition made on the 31st of October last. Mr. de Onis then proposed the following line: "Beginning at the mouth of the river Sabine on the Gulf of Mexico; following the course of said river to the thirty-second degree of latitude, the eastern bank and all the islands in the river to belong to the United States and the western bank to Spain; thence due north to the northernmost part of the thirty-third degree of north latitude and until it strikes the Rio Roxo or Red river; thence by said river to the northernmost point of the bend between longitude one hundred and one degrees and one hundred and two degrees; thence by the shortest line to the southernmost point of the bend of the river Arkansas between the same degrees of longitude one hundred and one and one hun-

dred and two; thence following the course of the river Arkansas to its source in latitude forty-one degrees north; thence following the same parallel of latitude forty-one degrees to the South Sea. . . . If the source of the Arkansas river should fall south or north of latitude forty-one degrees, then the line from the said source shall run due north or south, as the case may be, till it meets the said parallel of latitude, and thence as aforesaid to the South Sea; the navigation of the said rivers shall belong exclusively to the United States forever." A few days later, or on February 9, he changed this proposition so that the line should extend westward on the Rio Roxo to the one hundred degree of longitude and thirty-three and one-fourth degrees of latitude, where it crosses that river; "thence by a line due north by the said one hundred degree of longitude from London, according to Melish's map, till it enters the river Arkansas; thence along the middle of the Arkansas to the forty-second degree of latitude; thence a line shall be drawn to the westward by the same parallel of latitude to the source of the river San Clemente, or Multnomah, following the course of that river to the forty-third degree of latitude; and thence by a line due west to the Pacific Ocean."* Both Floridas by his proposition were to be ceded to the United States; and both countries were to renounce all claims against each other, for damages, injuries, etc.

On February 13, Mr. Adams presented the following counter proposition: "The boundary line between the two countries west of the Mssissippi shall begin on the Gulf of Mexico at the mouth of the river Sabine in the sea; continuing north along the western bank of that river to the thirty-second degree of latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; thence following the course of the Rio Roxo westward to the degree of longitude one hundred and two west from London and twenty-five from Washington; then crossing the said Red River and running thence by a line due north to the river Arkansas; thence following the course of the southern bank of the Arkansas to its source in latitude forty-one degrees north; and thence by the parallel of latitude to the South Sea." If the source of the Arkansas was north or south of forty-one degrees, a straight line due north or south was to be run thereto. The other propositions were the same as proposed by Mr. de Onis.

In the final discussion, in which, owing to the indisposition of Mr. de Onis, Mr. Hyde de Neuville took part, the Spanish

* American State Papers.

envoys asked that the boundary be fixed in the middle of the rivers named, but the United States insisted that the line should be on the western bank, though stipulating that the navigation of the streams should be open to the vessels of both countries. The United States agreed to the proposition of Spain that the line should extend no farther westward than the one hundredth degree of longitude on the Red river, and also agreed to the forty-second degree of latitude instead of the forty-third for the extension to the Pacific ocean. The reason given for the objection of the Spanish minister to the extension of the line so far up the Red river, was that it carried the limits of the United States too near Santa Fe, the capital of New Mexico, a Spanish province. The following is the full text of several of the articles embraced in the ratified treaty:*

"Article III. The boundary line between the two countries west of the Mississippi shall begin on the Gulf of Mexico at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river, to the thirty-second degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; thence following the course of the Rio Roxo westward, to the degree of longitude one hundred west from London and twenty-three from Washington; then, crossing the said Red River, and running thence, by a line due north, to the river Arkansas; thence following the course of the southern bank of the Arkansas, to its source, in latitude forty-two degrees north; and thence, by that parallel of latitude, to the South Sea. The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818. But if the source of the Arkansas river shall be found to fall north or south of latitude forty-two degrees, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude forty-two, and thence, along the said parallel, to the South Sea: All the islands in the Sabine and the said Red and Arkansas rivers, throughout the course thus described, to belong to the United States; but the use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations.

"The two high contracting parties agree to cede and renounce all their rights, claims and pretentions, to the territories

* Treaties of the United States.

described by the said line, that is to say: The United States hereby cede to his Catholic Majesty, and renounce forever, all their rights, claims and pretensions, to the territories lying west and south of the above described line; and, in like manner, his Catholic Majesty ceded to the United States all his rights, claims and pretensions to any territories east and north of the said line, and for himself, his heirs and successors, renounces all claim to the said territories forever."

"Article II. His Catholic Majesty cedes to the United States in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents which relate directly to the property and sovereignty of said provinces, are included in this article. The said archives and documents shall be left in the possession of the commissioners or officers of the United States duly authorized to receive them."

It was further provided "that Spanish vessels coming laden only with productions of Spanish growth or manufacture directly from the ports of Spain or of her colonies, shall be admitted for the term of twelve years to the ports of Pensacola and St. Augustine in the Floridas, without paying other or higher duties on their cargoes or of tonnage than will be paid by the vessels of the United States." And in article IX, the United States made the following renunciation: "To all claims of indemnities on account of the suspension of the right of deposit at New Orleans in 1802."

It was provided that commissioners and surveyors should be appointed to fix the boundaries definitely within one year from the date of ratifying the treaty; that the ceded territory should in due course of time be admitted into the Union; that grants of land by the king of Spain in the Floridas after the 24th of January, 1818, should be null and void; that grants by his Cathlic majesty previous to that date "shall be ratified and confirmed to the persons in possession of the lands to the same extent that the same grants would be valid if the territories had remained under the dominion of His Catholic Majesty. But the owners in possession of such lands who by reason of the recent circumstances of the Spanish nation and the revolutions in Europe have been prevented from fulfilling all the conditions of their grants, shall complete them within the terms limited in the same respectively from the date of this treaty, in default of which the said grants shall be null and void;" that the United States should sat-

isfy its own citizens for claims against Spain to the extent of five millions of dollars, the claims to be settled by a commission. Mr. de Onis objected to the stipulation limiting to five millions of dollars the amount to be paid by the United States on account of damages claimed by American citizens, on the ground that the territories ceded were worth four or five times that amount; but in the end it was allowed to remain. The treaty was concluded February 22, ratified by the senate February 24, and by the president February 25, 1819.

By an act approved March 3, 1819, congress enacted "That the President of the United States be and he is hereby authorized to take possession of and occupy the territories of East and West Florida, and the appendages and appurtenances thereof; and to remove and transport the officers and soldiers of the King of Spain being there to the Havana, agreeably to the stipulation of a treaty between the United States and Spain, executed at Washington on the 22d day of February in the year 1819, providing for the cession of said territory to the United States; and he may for these purposes and in order to maintain in said territories the authority of the United States, employ any part of the army and navy of the United States and the militia of any State or territory which he may deem necessary." The president was authorized to establish a temporary government therein, and the sum of twenty thousand dollars was appropriated to defray the necessary expenses. This enactment closed with the following paragraph: "That this act shall take effect and be in force whenever the aforesaid treaty providing for the cession of said territories to the United States shall have been ratified by the King of Spain, and the ratifications exchanged, and the King of Spain shall be ready to surrender said territory to the United States according to the provisions of said treaty."* This clause rendered the act inoperative until after the ratification of the Spanish monarch on October 24, 1820. On the 3d of March, 1821, the clause above concerning the occupancy by the United States and the removal of the Spanish troops was re-enacted by congress.

The king of Spain did not ratify the treaty within the six months stipulated, nor for a considerable time after the expiration of that limit. Serious objections were found to the details of the several articles of the treaty. Spain desired an explanation of "an imputed system of hostility on the part of citizens of the United States against the subjects and dominions of Spain, and to obtain new stipulations against these alleged injuries as

* Annals of Congress.

the condition on which the treaty should be ratified." These explanations were courteously given by the United States. She also insisted as a condition of the ratification "that the United States should abandon the right to recognize the revolutionary colonies in South America or to form other relations with them," which demand was positively refused by the United States. On the other hand, the United States insisted that certain grants of land, embracing nearly all of West Florida and much of East Florida, should be absolutely null and void. In the meantime, Spain held possession of the Floridas. Early in 1820 Mr. de Onis, owing to ill health, was recalled, and was succeeded by Gen. Don Francisco Dionisio Vives, who insisted on further explanations before the treaty would be ratified by Spain. There is no doubt that much assistance was furnished by citizens of the United States to the revolting colonies of Mexico and South America. This was well known at New Orleans, which seemed to be the principal point from which hostile expeditions were dispatched. Spain therefore rightfully demanded that some provision should be adopted by the United States to prevent such hostile proceedings against a friendly power. After giving what he considered full explanations to the demands of Spain, Mr. Adams, who had become tired of the delay, wrote to General Vives as follows: "But it is proper to apprise you that, if this offer be not accepted, the United States, besides being entitled to resume all the rights, claims and pretensions which they had renounced by the treaty, can no longer consent to relinquish their claims of indemnity and those of their citizens from Spain for all the injuries which they have suffered and are suffering by the delay of His Catholic Majesty to ratify the treaty. The amount of claims of the citizens of the United States which existed at the time when the treaty was signed far exceeded that which the United States consented to accept as indemnity. Their right of territory was and yet is to the Rio del Norte. I am instructed to declare that if any further delay to the ratification by His Catholic Majesty of the treaty should occur, the United States could not hereafter accept either of five millions of dollars for the indemnities due to their citizens by Spain, nor of the Sabine for the boundary between the United States and the Spanish territories." But this threat did not seem to disconcert General Vives in the least, for he proceeded coolly to discuss the differences. Finally, a committee of the house of representatives submitted a bill "to authorize the President of the United States to take possession of East and West Florida and establish a temporary government therein." The committee also stated that inasmuch as the crown lands in

the two Floridas would probably be insufficient to pay the indemnities due the citizens of the United States, the latter would be under the necessity of looking to the dominions of Spain to the westward to supply the deficiency. Finally, on the 24th of October, 1820, the treaty was duly ratified by the Spanish monarch. The senate again ratified it February 19, 1821.

In the month of April, 1820, previous to the ratification, Henry Clay, who favored heroic measures in regard to the Floridas, and particularly in regard to the treatment of Spain, introduced into the house the following resolution: "*Resolved,* That the Constitution of the United States vests in Congress the power to dispose of the territory belonging to them, and that no treaty purporting to alienate any portion thereof is valid without the concurrence of Congress; that the equivalent proposed to be given by Spain to the United States in the treaty concluded between them on the 22d of February, 1819, for that part of Louisiana lying west of the Sabine was inadequate; and that it would be inexpedient to make a transfer thereof to any foreign Power or renew the aforesaid treaty."*

Mr. Clay, who favored the occupation of West Florida by the United States said, in support of his resolution: "In the peace of 1783 Great Britain surrendered the country (West Florida) to Spain, who for the *first* time came into the actual possession of it. She re-annexed it to the residue of Louisiana; extended the jurisdiction of that Government to it, and subjected the Governors or commandants of the districts of Baton Rouge, Feliciana, Mobile and Pensacola to the authority of the Governor of Louisiana residing at New Orleans; whereas the Governor of East Florida was placed wholly without his control and was made amenable directly to the Governor of the Havana. I have been credibly informed that all the concessions or grants of land made in West Florida under the authority of Spain, run in the name of the *government of Louisiana.* . . . West Florida, then, not only as France has held it, but as it was in the hands of Spain, made a part of the province of Louisiana, as much so as the jurisdiction or district of Baton Rouge constituted a part of West Florida. . . . France in 1762 transferred Louisiana west of the Mississippi to Spain, and at the same time conveyed the eastern portion of it, exclusive of New Orleans, to Great Britain. Twenty-one years after, that is, in 1783, Great Britain ceded her part to Spain, who thus became possessed of the entire province—one portion by direct cession from France,

* Annals of Congress.

and the residue by indirect cession. Spain then held the whole of Louisiana *under* France and in virtue of the title of France. The whole moved or passed from France to her. When, therefore, in this state of things, she says in the treaty of St. Ildefonso that she retrocedes the province to France, can a doubt exist that she parts with and gives back to France the entire colony? To preclude the possibility of such a doubt, she added that she restored it, not in a mutilated condition, but in that precise condition in which France had, and she herself, possessed it. . . . By the act of the 24th of February, 1804, for laying duties on goods imported into the ceded territories, the President is empowered *whenever he deems it expedient*, to erect the bay and river Mobile, &c., into a separate district and to establish therein a port of entry and delivery. By this same act the Orleans Territory is laid off and its boundaries are so defined as to comprehend West Florida. . . . Never could a more propitious moment present itself for the exercise of the discretionary power placed in the President of the United States, and had he failed to embrace it he would have been criminally inattentive to the dearest interests of this country. It cannot be too often repeated, that if Cuba on the one hand and Florida on the other, are in the possession of a foreign maritime Power, the immense country belonging to the United States, watered by streams discharging themselves into the Gulf of Mexico—that is, one-third, nay, more than two-thirds of the United States, comprehending Louisiana, is placed at the mercy of that Power. The possession of Florida is a guarantee absolutely necessary to the enjoyment of the navigation of those streams. . . . It is conceived as ungenerous that we should at this moment, when Spain is encompassed and pressed on all sides by the immense power of her enemy, occupy West Florida. Shall we sit by, passive spectators, and witness the interesting transactions in that country—transactions which tend to jeopardize in the most imminent degree our rights without interference? Are you prepared to see a foreign Power seize what belongs to us? I have heard in the most credible manner that about the period when the President took his measures in relation to that country, the agents of a foreign Power were intriguing with the people there to induce them to come under his dominion. Whether this be the fact or not, it cannot be doubted that if you neglect the present auspicious moment—if you reject the proffered boon, some other nation profiting by your errors, will seize the occasion to get a fatal footing in your southern frontier. I have no hesitation in saying that if a parent country will not or cannot maintain its

authority in a colony adjacent to us, and there exists in it a state of misrule and disorder menacing our peace, and if, moreover, such colony by passing into the hands of any other Power would become dangerous to the integrity of the Union and manifestly tend to the subversion of our laws, we have a right upon eternal principles of self-preservation to lay hold of it. This principle alone, independent of any title, would warrant our occupation of West Florida. But it is not necessary to resort to it, our title being in my judgment incontestably good. . . . But if Great Britain persists in a denial of justice to us, or if she avails herself of the occupation of West Florida to commence war upon us, I trust and hope that all hearts will unite in a bold and vigorous vindication of our rights. . . . I am not in favor of cherishing the passion of conquest. But I must be permitted to conclude by declaring my hope to see ere long the new United States (if you will allow me the expression), embracing not only the old thirteen States, but the entire country east of the Mississippi, including East Florida, and some of the territories to the north of us also."

Senator Pope of Kentucky said: "Before 1762–3 Louisiana extended east to the river Perdido. France and Spain by the treaty of 1719 established this boundary between Florida now called East Florida and Louisiana. . . . Thus France prior to 1762–3 claimed the river Perdido as their eastern limit, nor does this fact appear to have been contested by the British minister. . . . The cession of West Louisiana with the island of New Orleans to Spain and of East Louisiana, since called West Florida to Great Britain, were made at the same time in the year 1762–3. It is, however, well known that France made the cession to Great Britain at the instance and for the benefit of Spain, to enable her with the cession of Florida, now called East Florida, to obtain a restitution of Cuba. The whole of Louisiana not conquered by Great Britain, may with propriety be said to have been given up or ceded to Spain. By the treaty of 1803, we acquired Louisiana as fully and in the same manner as it had been acquired by France from Spain in virtue of the Treaty of St. Ildefonso, of the first of October, 1800. . . . I do not, however, think it difficult to account for the conduct of Spain. My conjecture is that France, after she had sold Louisiana to the United States and received the price stipulated, secretly advised Spain not to surrender it, having at that time formed the project which she is now attempting to execute of acquiring the whole Spanish empire. Her interest was, therefore, identified with that of Spain, and she was no doubt willing to unite with

Spain in giving the most limited construction to the cession to the United States. . . . Why should our sympathies be awakened in favor of Spain? What claim has the Spanish Government upon our moderation and forbearance? What has been her conduct? From the moment we became an independent nation, she has been intriguing to separate the Western country from the Atlantic States. She has made at different periods and as late as the year 1797, in violation of her treaty of 1795 with this country, direct propositions to the Western people to secede from the Union; and, to accomplish her object, at least attempted the use of means the most corrupt. . . . If the French arms shall be successful in Spain, of which I believe few entertain much doubt, and the Junta shall be driven from Old Spain to any of the colonies, their political character must cease and they can no longer claim the exercise on any jurisdiction or sovereignty over the colonies. The colonies are not bound together by any political bond unconnected with the mother country; they are subject to the mother country, but the moment she is conquered they are at liberty to provide for themselves; unless, indeed, the Emperor of France or King Joseph can claim them. France in an official exposé and King Joseph by proclamation have declared their willingness that the colonies should become independent, provided they do not connect themselves with Great Britain. If France, therefore, shall conquer the country, which is probable, we are fully authorized by her public declaration to the world to acquire with the consent of the inhabitants not only West but East Florida, Cuba or any other province we shall deem it expedient to connect with the United States."

The views of Mr. Clay and Mr. Pope were combatted by Mr. Horsey of Delaware, who said: "I cannot admit that France has acquired a legitimate title to the crown and colonies of Spain. . . . Was not the royal family decoyed by artifice from Madrid to Bayonne? Was not the old Monarch compelled to resign his crown to Ferdinand the Seventh, and was not that Prince a prisoner of Bonaparte, and while in this conditon and, for aught we know, the bayonet at his breast or the cup to his lips, constrained to resign his crown to the Emperor of France?" Sir, what sort of title is this? Upon the eternal principles of justice, upon the principles of common law and common sense, an instrument thus obtained is not obligatory on the party executing it. But have the people of Spain acquiesced? No, sir, the instant publicity was given to the transaction, they became indignant and with one voice rose resolved to resist this usurpation. To this hour they have not submitted. But the gentleman has said that

Spain is no longer able to hold Florida; that foreign emissaries will take it if the United States do not, and that it may be lawfully taken by the United States on the ground of the law of occupancy; but to obtain a title in this way the country must be vacant, uninhabited and not claimed by another proprietor, which is not the case with West Florida. . . . It appears that in 1764 when the whole of Louisiana with the island and town of New Orleans was delivered to Spain, Great Britain was in the peaceable possession of all the country on the east of the Mississippi; that with respect to Florida particularly Great Britain was in possession, and nobody dreamed at that time that Florida, either East or West, was any part of Louisiana. Had it been so considered, under the orders of the French King to deliver the whole of the province to Spain, undoubtedly Florida would have been delivered. . . . The Treaty of St. Ildefonso of 1800 is a mere treaty of retrocession. The translation purports to be a treaty of cession, it is true, but acknowledged on all sides to be erroneous. The original treaty was in the French language, and it is by that we are to be governed. The expression in the original is, 'Sa Majesté Catholique promit et s'engage, de son cote, à retroceder à la Republique Française,' &c. A retroceder, signifying to retrocede, to restore, or, to use a term familiar in the State I have the honor to represent, reconvey the colony of Louisiana to France as it was when France conveyed it to Spain. The honorable gentleman from Kentucky (Mr. Pope), pressed by his argument, could only get round by alleging that the original treaty between France and Spain was dated in 1761, prior to the settlement of the line and the cessions to Great Britain. But unfortunately, he could not produce one title of authentic evidence to establish his position. . . . It is said that when France ceded Louisiana to Spain in 1762, the country exended on the west of the river Sabine, and that prior to the treaty of 1800 detached from Louisiana the territory south of the waters emptying into the Red river and erected it into a new province under the name of the Province of Texas. Sir, the operations on the Sabine are memorable. It is well known how mysteriously they were suspended by an arrangement in 1806, by which it was agreed that the Spaniards should not cross the Sabine and that the Americans should not extend their settlements as far as that river. And for this purpose, to prevent collisions until the difference should be settled, instructions were given that no surveys should be made west of a meridian passing by Natchitoches. . . . When possession was originally delivered by France to Spain, Florida was not delivered or con-

sidered any part of the cession. When Louisiana was restored to France, Florida was not delivered. When the province was delivered to the United States, Florida was not comprehended. Indeed the Government then treated the country west of the Mississippi, including the town and island of New Orleans, as the whole of Louisiana, by receiving it and paying the purchase money, which by the terms of the treaty they were not bound to do, and which by the Act of Congress creating the Louisiana stock they were not authorized to do, till after full and entire possession had been delivered."

Many minor questions of importance with which these volumes are not concerned were settled by the treaty of 1819 between Spain and the United States. The object of this and the previous chapter has been to follow the steps taken by the two governments in establishing the Florida and the Texas boundaries. No person of this day can correctly assert that the Louisiana ceded to the United States was bounded on the southwest by the Rio Grande, or the Colorado, or the Sabine. The truth is, the boundary was undetermined. When it is declared that the claims of the United States to the country westward to the Rio Grande or the Colorado were better than those of Spain, that is another question. It then becomes a question of fact to be determined by evidences. All the evidences in existence were duly considered at the time, and the boundary was established on the Sabine. In securing an extension on the north to the Pacific ocean, the United States was ceded territory to which at the time of obtaining Louisiana it laid no claim. This had been no part of the Louisiana ceded by France and retroceded by Spain and finally acquired by the United States in 1803. No claim had been made to territory westward of the Mississippi watershed. Therefore, the country west of the mountains, so far as Spain owned it, was ceded by that Government in 1819 to the United States. But Great Britain claimed a part of it, and it therefore took another treaty to finally settle the ownership.

There was no necessity for a treaty with any nation to warrant the United States in claiming as the western boundary of Louisiana north of the forty-second degree of latitude, the highlands separating the Upper Missouri valley from the river basins descending to the Pacific. That claim was never disputed until the Spanish commissioner in 1818-19 attempted to locate such boundary farther to the eastward as hereinbefore narrated. This contention by Spain was wholly unfounded, because no sound evidence was ever produced to disprove the justice of the claim that Louisiana in the northwest extended to the height of land beyond

the sources of the Missouri. But the treaty of 1819 with Spain, may for all that, be said to have settled definitely this line, particularly its southern point where the forty-second parallel intersected the principal chain of the Rocky mountains. And in the same manner, it may be said that the northern point was definitely settled by the treaty with England in 1818, when the forty-ninth parallel from the Lake of the Woods to the Rocky or Stony mountains was agreed on as the northern boundary of the United States.

CHAPTER IX

The Northern Boundary

UNDER the liberal charters granted by the kings of England to the early navigators who discovered the Atlantic coast claims were at first made to extensions of territory westward to the Pacific ocean, or the South Sea as it was then generally called. The practice of making such claims was common to every colony on the Atlantic seaboard; and the claims were usually extended westward along parallels of latitude corresponding to the northern and southern limits of each colony.* This was the custom of the English, but not that of the French nor the Spanish. Nor had the pope previously paid any attention to such parallels in his famous bull which divided the whole of the western hemisphere between Spain and Portugal. The practice of both France and Spain was to take formal possession of the mouth of a river, and then in consequence claim the entire basin of that stream. As is well known, the custom of the English in making such claims encountered vigorous opposition when attempts were made to extend their limits westward of the Alleghany mountains. It was then that the practices of colonial expansion which had been adopted by France and Great Britain resulted in distinct and bloody conflict and in an aggravation of the ancient jealously and hostility, with which each of those countries regarded the other.

Still, these parallels continued to be important factors in the settlement of disputes over questions of boundary throughout the interior of the continent, even after the colonial period had ended. France presented the first serious obstruction to the English pretensions by extending Canada to the westward over the

* History of the United States: Bancroft.

valley of the St. Lawrence river, including the Great Lakes, to the Mississippi river. Thence, by expanding her dominions southward to the Gulf of Mexico, she completely checked the progress of the English colonies to the westward, at least as far to the westward as the Mississippi. This result was premeditated by the French, who expressly designed to obstruct the territorial growth of the English American colonies.* At first it seemed that the English were thus prevented from rightfully extending their limits to the westward of the Alleghanies; but later it became apparent that they had the better right to the upper Ohio valley at least. In consequence of the rival claims, the conflict at Fort Duquesne, the present site of Pittsburg, formed one of the momentous preliminaries to the bloody "Seven Years War."

During the early stages of the dispute over American territory, Great Britain did not claim sovereignty of the country much if any to the westward of the Wabash river. Her claims were mainly confined, and rightfully so, to the tract of country embraced by the upper branches of the river Ohio. The French for many years previous, possessed settlements at Vincennes, on the Illinois river, at Kaskaskia, and elsewhere, which were not disputed by the English colonies; but there was nothing, in the judgment of the English, whose colonial policy of expansion differed so essentially from that of the French, to prevent their occupancy of the upper Ohio valley, disclaiming as they did the right of France to the ownership of the whole valley of the Mississippi (including the upper Ohio) by simply taking possession of the mouth of that river and in reality not occupying with settlements immense tracts of country on its upper sources. Such pretensions by the French were therefore emphatically denied by the English, and in consequence contests of the bitterest character were resorted to by those nations to settle the question of ownership of the upper Ohio valley. Aside from this valley, the French had cemented their right to the remainder of the country to the westward of the Alleghanies by the stipulations of the treaty of Utrecht, concluded April 11, 1713; and at that period it must be admitted that France had the better right to the territory extending from the Alleghanies to the Wabash river; but they slept on their rights and made very little effort to form settlements in that great expanse of country. Later, the English gained footholds therein by forming settlements, which the French soon attempted to dislodge or destroy.

One of the articles of the treaty of Utrecht provided that the

*History of New France: Shea.

English possessions on Hudson bay, captured by France during the war, should be restored, the following being the language used:* "The said Most Christian King shall restore to the Kingdom and Queen of Great Britain, to be possessed in full right forever, the bay and straits of Hudson, together with all lands, seas, seacoasts, rivers and places situate on the said bay and straits and which belong thereunto, no tracts of land being excepted, which are at present possessed by the subjects of France." The French duplicate of the provision was worded as follows: "Quant aux limites entre la Baie de Hudson et les lieux appartenans à la France, on est convenu reciproquement qu'ie sera nommé incressamment des Commissaires, qui les détermineront dans le terme d'un an; . . . les mêmes Commissaires auront le pouvoir de régler pareillement les limites entre les autres colonies Françaises et Britainuques dans ce pays-là." This treaty left France in possession of her territory on the St. Lawrence and the Mississippi rivers, and left England in possession of her territories on Hudson bay and along the Atlantic coast south of the Gulf of St. Lawrence. In addition she acquired Novo Scotia and Newfoundland as a result of the war. In Article X of this treaty the following language was used: "But it is agreed on both sides to determine within a year by Commissaries to be forthwith named by each party, the limits which are to be fixed between the said bay of Hudson and the places appertaining to the French; which limits both the British and French subjects shall be wholly forbid to pass over or thereby to go to each other by sea or by land. The same Commissaries shall also have orders to describe and settle in like manner the boundaries between the other British and French colonies in those parts." The Latin duplicate read as follows: "Ex utraque antem parte consensum est de Funbus, inter dictum Sinum de Hudson, a loca ad Gallos spectantia statuendis, per Commissarios, utriuque quantocius nominandos, inter annum decernere; quos quidem Limites Subditis tam Brittanicis quam Gallicis pertransire, aut alterntros sive Mari sive Terra adire, prohibitum omnino erit. Lisdem quoque Commissariis in Mandatis erit datum, ut Limites paritir inter alias Britannicas Gallicasque Colonias iis in Oris describant, statuantque." It was the intention of both parties to the treaty, as shown by the language above, that the boundary between the Hudson bay country and Canada should be the highlands separating the waters flowing into Hudson bay from those flowing into the St. Lawrence river. This line approximately, at the date of the treaty, was *assumed*

* Chalmers' Collection of Treaties.

to be about the forty-ninth degree of north latitude, though varying much from that parallel on the Atlantic coast. In accordance with the provisions of the treaty, commissioners were appointed by each power to ascertain within the specified time the boundaries between the possessions of the two countries in America. They met on the Atlantic coast and, having agreed as a starting point on a cape or promontory in latitude fifty-eight degrees thirty minutes north, proceeded thence southwest to Lake Mistasin, thence still farther southwest until the parallel of forty-nine degrees was intersected, and thence west along that line indefinitely.

When the whole territory passed to Great Britain as a result of the "Seven Years War," it was not necessary longer to consider such line for any purpose; but after the Revolution, when the rights of the United States began to figure, the old boundary between the Hudson bay settlements and Canada was revived to show the intentions of the parties and to show that the English possessions had extended southward to the forty-ninth degree of latitude. If such had been the intentions, the northern boundary of Canada would, of course, have been the forty-ninth parallel, and its extension to the westward would have been bounded on the north by the same line. By parity of reasoning, other things being equal, it was argued that the line should be continued westward to the Pacific in an extension to that ocean of the domains of the United States and Great Britain. This would have been the logical result of the English policy of colonial expansion, had not other countries secured a foothold on the Pacific coast and had it not been necessary to take other considerations into account. Spain, Great Britain and the United States acquired separate and independent claims generally to the Pacific coast where the forty-ninth parallel intersected the shore line and to other places above and below that point, with or without good grounds. It should be noted that in the contentions with Great Britain the westward extension on parallels of latitude cut much more of a figure than they did in the negotiations with Spain, the reason therefor being that France had based her claims to the whole basin of the Mississippi on the encompassing watershed regardless of parallels of latitude or meridians.

It was reasoned that if Canada was bounded on the north by the forty-ninth degree of latitude after the treaty of Utrecht, that parallel must have been its boundary when acquired by Great Britain in 1762-3 and was the northern boundary of the United States from the Lake of the Woods due westward to the Missis-

sippi when the latter secured their independence. This was the argument before the peace commission in 1782–3. Later, this assumed boundary on the forty-ninth parallel, abandoned wholly from 1762–3 to 1782–3, regarded with apparent unconcern from 1783 to 1800, became the suggested parallel that should separate the British from the American possessions. However, had it not been for one consideration, the United States would never have been able to claim in 1782–3 farther north than the forty-ninth parallel or even that far. That consideration was the right under the Louisiana purchase to all of the territory watered by the Missouri and its branches. This would have thrown the boundary near the Rocky mountains north of the forty-ninth parallel. But the treaty of 1782–3 settled the question by carrying the northern boundary in the northwest up to the "northwesternmost point of the Lake of the Woods." Had it not been for the stipulations of this treaty, the chances are that the United States west of Lake Superior would have been bounded on the north by the forty-fifth parallel, the boundary mentioned in the grant to Crozat in 1712. Succeeding the Revolution, had the United States insisted on an extension westward from the "northwesternmost point of the Lake of the Woods," as they had an undoubted right to do, a large strip of land now possessed by Canada would have fallen to the United States. But it must also be borne in mind that the boundary mentioned in the treaty of Utrecht and the natural water-way extending from Lake Superior to the Lake of the Woods, were the conclusive factors by which the United States could claim so high as that lake in the peace deliberations of 1782–3. At that time the latitude and longitude of the Lake of the Woods were unknown, but the lake was supposed to be intersected by the forty-ninth parallel.

In the provisional articles of peace of November 30, 1782 and in the definitive treaty of September 3, 1783, part of Article II was made to read as follows, reference being had to the line bounding the United States on the northwest: "Thence through Lake Superior northward of the isles Royal and Philippeaux to the Long Lake; thence through the middle of said Long Lake and the water communication between it and the Lake of the Woods to the said Lake of the Woods; thence through the said lake to the most northwestern point thereof, and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of said river Mississippi until it shall intersect the northernmost part of the thirty-first degree of north latitude." Article VIII of this treaty, as stated elsewhere, granted Great Britain the right to navigate the Mississippi from its source to

the sea, because it was then thought that the Mississippi extended as far to the north as the northernmost point of the Lake of the Woods and to the westward of such point, thus giving that nation territory on its banks. This was in accordance with the opinion expressed then and argued afterward by the United States, that the laws of nature and of nations gave any country which possessed territory on any part of the banks of a river the right to navigate such river from its source to the sea. It is clear from the above article that the commissioners who negotiated the peace of 1783 thought that the Mississippi lay to the westward of the Lake of the Woods--that is, that its sources were located at a degree of latitude as far north as the northwesternmost point of that lake. Therefore, their clear intention was to extend the northern boundary of the United States westward along the parallel which intersected the northwesternmost point of the lake.

Under date of August 6, 1794, John Jay, minister of the United States to Great Britain, presented the following proposition to Lord Grenville:* "Whereas, the boundaries of the United States, as delineated in the said treaty of peace (1783), and every article in the said treaty contained, are hereby recognized, ratified and forever confirmed; . . . and whereas, it is doubtful whether the river Mississippi extends so far to the northward as to be intersected by the west line from the Lake of the Woods, which is mentioned in the said treaty, it is agreed that the actual extent of the said river to the northward shall be explored and ascertained by commissioners for that purpose, to be appointed and authorized as follows, viz: It is agreed that if, from the report of the said commissioners, it shall appear that the said river does not extend so far to the northward as to be intersected by the west line aforesaid, by reason whereof the boundary lines of he United States in that quarter would not close, then and forthwith thereupon such a closing line shall be established as shall be adjudged and determined to be most consistent with the true intent and meaning of the said treaty by commissioners to be appointed and authorized in the manner prescribed in other articles herein." To this communication Lord Grenville returned the following counter proposition: "That whereas it is now understood that the river Mississippi would at no point thereof, be intersected by such westward line as is described in the said treaty; and whereas it was stipulated by the said treaty that the navigation of the Mississippi should be free to both parties, it is agreed that the boundary line shall run in the manner described

* American State Papers.

by the treaty from the Lake Huron to the northward of the Isle Philippeaux in Lake Superior; and that from thence the said line shall proceed to the bottom of West Bay in the said lake; and from thence in a due west course to the river of the Red Lake or eastern branch of the Mississippi and down the said branch to the main river of the Mississippi; and that as well on the said branch as on [—— or —— through Lake Superior; and from thence to the water communication between the said lake and the Lake of the Woods to the point where the said water communication shall be intersected by a line running due north from the mouth of the river St. Croix, which falls into the Mississippi below the Falls of St. Anthony, and that the boundary line shall proceed from such point of intersection in a due southerly course along the said line to the Mississippi, and that as well on the said water communication as on] every part of the Mississippi where the same bounds the territory of the United States, the navigation shall be free to both parties, and his majesty's subjects shall always be admitted to enter freely into the bays, ports and creeks on the American side and to land and dwell there for the purposes of their commerce; and for greater certainty the undersigned ministers have annexed to each of the copies of this treaty a copy of the map made use of by them with the boundaries marked thereon agreeably to this article; and the boundaries of the United States as fixed by the said treaty of peace and by this treaty, together with all the other articles of the said treaty are hereby recognized, ratified and forever confirmed." The matter within the brackets of this proposition was an alternative offer presented for the consideration of Mr. Jay. It should be noted that these propositions of the British minister differed vastly from the manifest intention of the parties to the treaty of 1783.

Mr. Jay returned an answer to the effect that if the provisions of the treaty of 1783 could not be carried out *in toto* they should be so far as possible by closing over the shortest and most reasonable path or line the gap between the northwesternmost point of the Lake of the Woods and the source of the main branch of the Mississippi; that such source had not yet been ascertained; that the only sources of that river governing the deliberations of the convention were wholly a matter of conjecture; that a joint survey should be made for determining the best mode of closing the gap in the line; that "neither Great Britain nor the United States ought to cede or to acquire any territory further than what such closing line might possibly render unavoidable;" that neither country should be content "with delusive conjectures and probabilities when absolute certainty could easily be had;" that if a

line drawn westward of the Lake of the Woods could not intersect the Mississippi, other and reasonable measures should be taken to close the lines in that quarter; that there was nothing in the treaty of 1783 to show that the line which should reach the Mississippi must do so at some navigable point; that the undoubted intention had been to intersect the Mississippi at some point far above the Falls of St. Anthony which obstructed navigation; that the parties did not know, could not have known, whether the line to be drawn due west from the Lake of the Woods would intersect the Mississippi at a navigable point or not; that the stipulation in the treaty of 1783 concerning the navigation of the Mississippi, was an after-thought which gave rise to the eighth article; that there had been no thought concerning navigable water; that no stipulation was asked for nor introduced regarding facilities for the navigation of the river from the British dominions on the north; and that the propositions of Great Britain contemplated the cession by the United States of more than thirty thousand square miles of territory no matter which of them was accepted.

Lord Grenville replied that the language of the treaty of 1783 stipulated the line should be drawn *from* the Lake of the Woods due west *to* the Mississippi; that as such a line could not be drawn, no stipulation concerning such line could be fixed or binding; that in establishing a new boundary it was as reasonable to suppose that Great Britain would be required to cede territory as the United States would be to do so; that in all settlements of the boundary the right of Great Britain to navigate the Mississippi should be borne in mind; that as the navigation of the Mississippi had been provided for in the treaty of 1783, it must have been the intention of the parties that Great Britain should possess land upon its banks; that if after a survey the line of 1783 could be drawn, it should be made the boundary; that there could be no objection to the appointment of commissioners to determine the boundary, provided the rights of Great Britain to the navigation of the Mississippi were duly considered; and that no objection occurred to making a survey save that of delay.

The ministers were thus far apart in their respective demands, with almost every argument in favor of the claims of the United States. One proposition of the British minister ran the line directly north from the mouth of the river St. Croix till it intersected Rainy Lake and thence down the water courses to Lake Superior, leaving the present site of St. Paul and Minneapolis outside of the limits of the United States. The other approximately ran the line westward from the present Ashland, Wis., in about the direction of Aitkin, Minn., until it should

intersect "Red Lake river or Lahontan's Mississippi" some distance south of Red lake, leaving the present site of Duluth north of the line. Under the former line, the American minister estimated that the United States would relinquish thirty-two thousand four hundred square miles, and under the latter thirty-five thousand five hundred and seventy-five square miles. The British contentions had no ground to stand on; whereupon Lord Grenville, trusting that time and skillful negotiation in the future would deal more kindly with the desires of Great Britain, agreed with Mr. Jay that before concluding the boundary the necessary survey should be made. However, particular attention is called to the extravagance of the British demands and pretensions. This attitude, so early taken in the controversy, became even more pronounced and unjustifiable as time passed and as the rights of the United States improved with the acquisition of Louisiana and the Spanish claims on the Pacific coast.

However, in the treaty of November 19, 1794, usually called "Jay's Treaty," it was stated in Article III that* "the river Mississippi shall, according to the treaty of peace, be entirely open to both parties: and it is further agreed that all the ports and places on its eastern side, to whichsoever of the parties belonging, may freely be resorted to and used by both parties in as ample a manner as any of the Atlantic ports or places of the United States or any of the ports or places of His Majesty in Great Britain." It was this provision to which Spain took serious and emphatic objection the following year, on the ground that the United States had no right to presume to cede to England freedom to navigate the Mississippi south of the thirty-first degree of latitude, because it did not own either of the banks south of that parallel. The following article was embraced in Jay's Treaty:*

"Article IV. Whereas, it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line to be drawn due west from the Lake of the Woods in the manner mentioned in the treaty of peace between His Majesty and the United States, it is agreed that measures shall be taken in concert between His Majesty's Government in America and the Government of the United States for making a joint survey of the said river from one degree of latitude below the falls of St. Anthony to the principal source or sources of said river and the parts adjacent thereto; and that if on the result of such survey it should appear that the said river would not be intersected by such a line as above mentioned, the two parties will thereupon proceed

* American State Papers.

by amicable negotiation to regulate the boundary line in that quarter as well as all other points to be adjusted between the said parties according to justice and mutual convenience and in conformity to the intent of the said treaty."

The joint survey thus provided for was never carried into effect. It was a subject which did not press for adjustment at that time, and was permitted to lie dormant under the excitement of more important events at home and abroad. When the survey was finally made it was ascertained that the northwesternmost point of the Lake of the Woods was in latitude forty-nine degrees and thirty-seven minutes north of the equator. The United States should have insisted on this parallel for its westward extension to the Pacific ocean, because this point was fully countenanced by the treaty of 1783, and not disputed until the commissioners of the United States themselves proposed the demarcation of the forty-ninth parallel. The establishment of the forty-ninth parallel by the commissioners appointed under the treaty of Utrecht, was even declared at the time of the cession of Louisiana to the United States to be involved in considerable doubt. Of course, the United States did not anticipate the acquirement of Louisiana, and previous to the cession felt safe as to its boundaries, which were defined by the treaty of 1783. This will probably account for the lack of interest shown by the Americans prior to the cession. A few degrees more or less in the sharp angle at the Lake of the Woods would cut no serious figure; but when Louisiana was acquired the United States should at once have sent a competent surveyor to fix the northwesternmost point of that lake, and then have demanded that the boundary westward should be on the parallel of that point. The unconcern before the cession may be excusable, but that afterward admits of no extenuation.

In June, 1802, Mr. Madison, secretary of state, instructed Rufus King, minister to Great Britain, to again open negotiations for the settlement of the northwestern boundary question.* He said, "The description supposes that a line running due west from that point (the northwesternmost point of the Lake of the Woods), would intersect the Mississippi. It is now well understood that the highest source of the Mississippi is south of the Lake of the Woods; consequently that a line due west from its most northwestern point would not touch any part of that river. To remedy this error it may be agreed that the boundary of the United States in that quarter, shall be a line running from that source of the Mississippi which is nearest to the Lake of the Woods, and strik-

*American State Papers.

ing it westwardly as a tangent, and from the point touched, along the watermark of the lake, to its most northwestern point, at which it will meet the line running through the lake." The question having been opened in London by Christopher Gore, chargé of the United States, he wrote as follows to the secretary of state under date of October 6, 1802: "On the part of the boundary which is to connect the northwest point of the Lake of the Woods with the Mississippi, Lord Hawkesbury observed that it was evidently the intention of the treaty of peace that both nations should have access to and enjoy the free use of that river; and he doubtless meant that this access should be to each nation through their own territories. He remarked that commissions, which I had proposed for ascertaining the relation of the Lake of the Woods and the Mississippi, if any doubt remained on this head, and running the line between these two waters according to your proposal, might establish such a boundary as would secure to each nation this object. To the remark I made no reply, other than by observing that the line suggested was what naturally seemed to be demanded by just interpretation, where such a mistake had happened as was herein supposed; but this I did, however, chiefly with a view of not assenting to his proposal and in a manner rather declining than courting the discussion. It will probably be persisted in; and I much doubt if this Government will be inclined to adjust any boundary in this quarter that has not the right desired for its basis." Lord Hawkesbury further said that it had been the intention of the parties to the treaty of 1783 to open the Mississippi freely to the vessels of both countries, and further intimated that such result should now be the intent of the same parties. The design of the British minister was thus easily fathomed by Mr. Gore.

In September, 1802, the latter submitted the plans of the United States to Lord Hawkesbury, to the following effect:* That as the second article of the treaty of 1783 supposed that a line drawn due west from the northwesternmost point of the Lake of the Woods would intersect the Mississippi, and as the highest source of the Mississippi is south of said point and such line could not thus intersect it, some provision should be made to settle the discrepancy and be incorporated in the pending treaty in accordance with the fourth article of the treaty of 1794. Mr. Gore suggested that it was "consistent with justice and the mutual convenience of the parties to establish the boundary of the United States in this quarter, by a line running from that

* Diplomatic Correspondence.

source of the Mississippi which is nearest to the Lake of the Woods, and striking it westwardly as a tangent, and from the point touched, along the watermark of the lake, to its most northwestern point at which it will meet the line running through the lake." He further suggested that the appointment of commissioners should be provided for in the convention.

Previous to this event, the latitude and longitude of various points in the western country, among which was the Lake of the Woods, had been ascertained for the Northwestern Fur Company by its astronomer, Mr. Thomson; but these were the figures of a private company and should not have formed the only basis for the arguments and calculations of the United States. A report of this survey* was contained in a work issued to describe the discoveries of McKenzie's voyage or expedition. It placed the Lake of the Woods in latitude forty-nine degrees thirty-seven minutes north, and longitude ninety-four degrees thirty-one minutes west; the northwesternmost branch of the source of the Mississippi was placed at latitude forty-seven degrees thirty-eight minutes north, and longitude ninety-five degrees six minutes west. These figures were obtained in the spring of 1798. The commissioners of the United States had no figures of their own as to the location of these points, and were obliged to rely on those above mentioned.

In commenting upon what Mr. Gore stated Lord Hawkesbury had said as above narrated, Mr. Madison wrote as follows under date of December 16, 1802, to Mr. King:† "By the communication of the 6th day of October, received from Mr. Gore, it appears that the proposition for adjusting the boundary in the northwest corner of the United States is not relished by the British Government. The proposition was considered by the President as a liberal one, inasmuch as the more obvious remedy for the error of the treaty would have been by a line running due north from the most northern source of the Mississippi and intersecting the line running due west from the Lake of the Woods; and inasmuch as the branch leading the nearest the Lake of the Woods may not be the largest or most navigable one, and may consequently favor the wish of the British Government to have access to the latter. The proposition for these reasons would not have been made but for a desire to take advantage of the present friendly dispositions of the parties for the purpose of closing all questions of boundary between them. As

* History of the Fur Trade: McKenzie.

† American State Papers.

it is not probable, however, that the settlement of this particular boundary will for some time be material, and as the adjustment proposed is not viewed by the British Government in the same light as by the President, it is thought proper that it should not for the present be pursued." He suggested that in the meantime provision should be made for surveys to ascertain the rights of the respective parties. It will thus be seen that Great Britain, having learned as early as 1798 that the source of the Mississippi was far south of the Lake of the Woods, and being impressed with the importance to her of the privilege of freely navigating the Mississippi, which had been granted her by the treaty of 1783, and confirmed by the treaty of 1794, clung at first to the idea of a boundary line running westward from the western point of Lake Superior till it intersected the Mississippi, the object of the British ministry being to secure a foothold on the bank of that river by throwing its upper sources within English limits, in which case their rights to navigate the Mississippi would not be disputed by the United States. When this demand was justly refused by the latter, the British representatives persisted in requiring, as their right under the treaties of 1783 and 1794, freedom to navigate the Mississippi, regardless of where the northwestern boundary should be established. This was asking for more than their right, and for more than the parties to the treaty of 1783 had contemplated, because the latter had proceeded on the supposition that the sources of the Mississippi were within the British possessions. When they were found not to be so, but were really found to be many miles within the American territory, the right of Great Britain to navigate that stream was rendered an absolute nullity by every construction and every law. Neither party at this time had the least idea that Louisiana was soon to pass to the possession of the United States. The language used in the treaty of 1783, and the manifest intention of the parties at that time, were the sole bases employed for settling the respective rights of the two countries.

In a communication dated May 13, 1803, Mr. King wrote from London to the secretary of state that "the source of the Mississippi nearest to the Lake of the Woods, according to McKenzie's report will be found about twenty-nine miles to the westward of any part of that lake, which is represented to be nearly circular. Hence, a direct line between the northwesternmost part of this lake and the nearest source of the Mississippi, which is preferred by this Government, has appeared to me equally advantageous with the lines we had preferred." After a long period

of negotiation by the envoys of the two countries, the following article was finally agreed upon and incorporated in the treaty formulated by the convention of May 12, 1803:*

"Article V. Whereas, it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line drawn due west from the Lake of the Woods, in the manner mentioned in the treaty of peace (1783) between His Majesty and the United States, it is agreed that instead of the said line, the boundary of the United States in this quarter shall and is hereby declared to be the shortest line which can be drawn between the northwesternpoint of the Lake of the Woods and the nearest source of the river Mississippi; and for the purpose of ascertaining and determining the northwest point of the Lake of the Woods and the source of the river Mississippi that may be nearest to the said northwest point, as well as for the purpose of running and marking the said boundary line between the same, three commissioners upon the demand of either Government shall be appointed and authorized, upon their oaths, to act; and their compensation and expenses shall be ascertained and paid and vacancies supplied in the manner provided in respect to the commissioners mentioned in the preceding articles; and the decisions and proceedings of the said commissioners or of a majority of them made and had pursuant to this convention shall be final and conclusive."

In a communication dated January 31, 1804, Mr. Madison wrote to Mr. Livingston: "The northern boundary (of Louisiana) we have reason to believe was settled between France and Great Britain by commissioners appointed under the treaty of Utrecht, who separated the British and French territories west of the Lake of the Woods by the forty-ninth degree of latitude. In support of our just claims in all these cases, it is proper that no time should be lost in collecting the best proofs which can be obtained. This important object has already been recommended generally to your attention. It is particularly desirable that you should procure an authenticated copy of the commercial charter granted by Louis XIV. to Crozat in 1712, which gives an outline to Louisiana favorable to our claims, at the same time that it is an evidence of the highest and most unexceptionable authority. A copy of this charter is annexed to the English translation of Joutel's journal of La Salle's last voyage, the French original not containing it. A record of the charter doubtless exists in the archives of the French Government; and it may

* Treaties of the United States.

be expected that an attested copy will not be refused to you. It is not improbable that the charter or other documents relating to the Mississippi project a few years after, may afford some light and be attainable from the same source. The proceedings of the commissioners under the treaty of Utrecht will merit particular research, as they promise not only a favorable northern boundary, but as they will decide an important event involved in a convention of limits now depending between the United States and Great Britain. To these may be added whatever other documents may occur to your recollection or research, including maps, &c. If the secret treaty of Paris in 1762–3 between France and Spain, and an entire copy of that of St. Ildefonso in 1800 can be obtained, they may also be useful. An authentication of the precise date at least of the former is very important."*

The acquisition of Louisiana by the United States so altered the rights of the latter, that the senate, on February 9, 1804, determined to ratify the convention of May 12, 1803, with article V, above set forth, wholly excluded, which was accordingly done.† This action was partly due to the contents of the following letter from Mr. King, dated New York, December 9, 1803: "The draft of the convention with Great Britain respecting boundaries, having been settled in previous conferences, was drawn up and sent by me to Lord Hawkesbury on the 11th of April; on the 12th of May the convention was signed without the alteration of a word of the original draft; and on the 15th of May the letter of Messrs. Livingston and Monroe (a copy of which was annexed to my No. 100), announcing the treaty of cession with France, was received and communicated by me to Lord Hawkesbury. At the date of the signature of the convention with Great Britain, I had no knowledge of the treaty with France; and have reason to be satisfied that Lord Hawkesbury was equally uninformed of it. It results that the convention with Great Britain was concluded without any reference whatever to the treaty of cession with France." The report of the senate committee on the subject was as follows: "That from the information they have obtained, they are satisfied that the said treaty was drawn up by Mr. King three weeks before the signature of the treaty with the French Republic of the 30th of April and signed by Lord Hawkesbury without alteration of a word; and that it had, in the intention of our minister, no reference whatever to the said treaty with the French Republic, inasmuch as he had no

* American State Papers.

† Senate Documents.

knowledge of its existence. But not having the means of ascertaining the precise northern limits of Louisiana as ceded to the United States, the committee can give no opinion whether the line to be drawn by virtue of the third (fifth) article of said treaty with Great Britain would interfere with the said northern limits of Louisiana or not."

The rights of the United States thus became so improved by the acquisition of Louisiana, that the stipulations concerning the northern boundary in the treaty of May 12, 1803, could not in fairness be agreed to by the government. The reasons were given in detail in the paper delivered to Lord Harrowby by the American minister on September 5, 1804, wherein it was stated that "after the treaty of 1783, and at the time the convention in contemplation was entered into, the territory which Great Britain held westward of the Lake of the Woods, was bounded south by the forty-ninth degree of north latitude; that which lay between the Lake of the Woods and the Mississippi southward of that parallel belonged to the United States; and that which lay to the west of the Mississippi to Spain. It being, however, understood by more recent discoveries or observations that the source of the Mississippi did not extend so high north as had been supposed, and Great Britain having shown a desire to have the boundary of the United States modified in such manner as to strike that river, an article to that effect was inserted in the late convention; but in so doing it was not the intention of the American minister or of the British minister to do more than simply to define the American boundary. It was not contemplated by either of them that America should convey to Great Britain any right to the territory lying westward of that line, since not a foot of it belonged to her; it was intended to leave it to Great Britain to settle the point as to such territory, or such portion of it as she might want, with Spain, or rather with France, to whom it then belonged. At this period, however, certain measures respecting the Mississippi and movements in that quarter (interdiction of the deposits at New Orleans) took place which seemed to menace the great interests of America that were dependent on that river. These excited a sensibility, acute and universal, of which in equal degree her history furnishes but few examples. They led to a discussion which terminated in a treaty with France, by which that Power ceded to the United States the whole of Louisiana as she had received it from Spain. This treaty took place on the 30th of April, 1803, twelve days only before the convention between Great Britain and the United States was signed, and some days before the adoption of such

treaty was known to the plenipotentiaries who negotiated and signed the convention. Under such circumstances, it is impossible that any right which the United States derived under that treaty could be conveyed by this convention to Great Britain, or that the ministers who formed the convention could have contemplated such an effect by it. Thus the stipulation which is contained in the fifth article of the convention has become by the cession made by the treaty perfectly nugatory; for as Great Britain holds no territory southward of the forty-ninth degree of north latitude and the United States the whole of it, the line proposed by that article would run through a country which now belongs exclusively to the latter."

The cession of Louisiana to the United States had no sooner become known in America than it was seen that a boundary wholly different from the one that had been contemplated and one much more favorable to the United States would have to be established. At this point the first serious mistake by the United States was made. The treaty of 1783, confirmed by that of 1794, carried the northern boundary up to the northwesternmost point of the Lake of the Woods, from which a due westerly line was to be drawn to the Mississippi. This had been the undoubted intention of the parties, and should have been the line insisted on in the extension westward by reason of the acquisition of Louisiana as far at least as the Rocky mountains. But the United States could not rightfully claim through Louisiana an extension beyond the Rocky mountains, because the Louisiana held by France prior to 1763 and from 1800 to 1803, and the Louisiana held by Spain from 1762 to 1800, were at no time claimed to extend beyond that chain of mountains, or farther than the sources of the branches of the Mississippi. Thus the United States, whether it acquired the one Louisiana or the other, had no claim by reason of the acquisition of Louisiana to any territory beyond the Rockies. But the attitude of England in regard to the boundary question seemed to change wholly by the improved interests of the United States, as will be shown in subsequent pages.

All important matters having been duly considered in London by the ministers of the two countries, it was mutually decided to postpone further negotiations until after the return of Mr. Monroe from the court of Spain. But after such return, questions of much greater weight, as, for instance, the course of Great Britain in impressing men from American vessels, engrossed the attention of the ministry, and the question of the northwestern boundary, while occasionally brought forward, was

permitted to languish. Although a treaty of amity, commerce and navigation between the two countries was concluded on December 31, 1806, nothing therein was agreed upon by the commissioners concerning the northern boundaries. However, it was mutually agreed at the time to take up that important controversy in a separate convention at no distant day. This was done in 1807. Much opposition to the American plans was at once encountered "from the prejudices, supposed interests and mistaken views of many persons, an explanation of some of which will be found in an idle paper written by Lord Selkirk."* The American commissioners proposed the following line: "It is agreed that a line drawn due north or south (as the case may require) from the most northwesterly point of the Lake of the Woods, until it shall intersect the forty-ninth parallel of north latitude, and from the point of such intersection, due west along and with the said parallel, shall be the dividing line between His Majesty's territories and those of the United States to the westward of the said lake; and that the said line to and along and with the said parallel shall form the southern boundary of His Majesty's said territories and the northern boundary of the said territories of the United States: provided, that nothing in the present article shall be construed to extend to the northwest coast of America or to the territories belonging to or claimed by either party on the continent of America to the westward of the Stony mountains." The British commissioners were willing to run the line as follows: "It is agreed that a line drawn due north or south (as the case may require) from the most northwestern point of the Lake of the Woods until it shall intersect the forty-ninth parallel of north latitude, and from the point of such intersection due west along and with the said parallel, shall be the dividing line between His Majesty's territories and those of the United States to the westward of the said lake as far as their said respective territories extend in that quarter; and that the said line shall to that extent form the southern boundary of His Majesty's said territories and the northern boundary of the said territories of the United States: provided, that nothing in the present article shall be construed to extend to the northwest coast of America or to the territories belonging to or claimed by either party on the continent of America to the westward of the Stony mountains."

The above two articles, as explanatory provisions, accompanied the project of the proposed supplementary treaty of April,

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* American State Papers.

1807. The article finally agreed upon by both parties was as follows: "It is agreed that a line drawn due west from the Lake of the Woods along the forty-ninth parallel of north latitude shall be the line of demarcation (division line) between His Majesty's territories and those of the United States to the westward of the said lake, as far as the territories of the United States extend in that quarter; and that the said line shall, to that extent, form the southern boundary of His Majesty's said territories and the northern boundary of the said territories of the United States; provided, that nothing in the present article shall be construed to extend to the northwest coast of America or to the territories belonging to or claimed by either party on the continent of America to the westward of the Stony mountains." The Americans objected to the words, "as far as the territories of the United States extend in that quarter." They wrote to Mr. Madison that "It appeared to us that by these words a great portion of the subject was in danger of being set at large; that the provision would perhaps do no more than establish between the parties the commencement of the line, and might of course leave it open to Great Britain to found a claim hereafter to any part of the tract of country to the westward of that commencement, upon the notions of occupancy or conquest, which you will find stated by Lord Selkirk in the paper above mentioned, or upon some future purchase from Spain, as intimated by others. We therefore proposed to omit the words in question altogether, which the concluding proviso appeared to render wholly unnecessary, even upon the ideas of the British commissioners. This was not agreed to; but it was said there would be no objection to give to this part of the description a character of reciprocity, so as to make it read, "as far as their said respective territories extend in that quarter." Why the language "as far as their said respective territories extend in that quarter," since the British commissioners themselves proposed it, was not used in the project, instead of in an explanatory article, is hard to comprehend. However, whether that expression or "as far as the territories of the United States extend in that quarter" was used, the American commissioners knew that the concluding proviso limited both countries, so far as the treaty was concerned, to the line eastward of the Stony mountains. That and the accompanying articles explained the intention of the parties. But this treaty was not concluded.

In November, 1826, when commenting on the claims of the United States to the northern boundary west of the Mississippi,

Mr. Gallatin said:* "The boundary fixed by the treaty of Utrecht might be and probably was intended for Canada rather than for Louisiana; and Crozat's charter expressly limits the last province to the forty-fifth degree of latitude." He therefore advised the president against a "commitment respecting the northern boundary of either Louisiana or the United States." It follows that had the United States relied upon the Crozat charter when settling the northern boundary west of the Mississippi, the line would undoubtedly have been fixed on the forty-fifth parallel. To offset this serious objection, the American commissioners argued that long after the grant to Crozat, Louisiana had been extended in all directions. However, the strongest argument for the United States in support of their contention for the forty-ninth parallel westward of the Mississippi to the Rocky mountains, was the boundary fixed by the treaty of Utrecht and the line established up the water courses to the Lake of the Woods in 1782-83.

It was mainly due to the influence of the Hudson's Bay Company that the British government fought so long over the boundary between Canada and the United States.† It was granted extensive and valuable privileges of trade and commerce on Hudson bay and the tributary rivers, and at first the country was called "Rupert's Land." Their privileges to the westward were very much enlarged when they undertook to send an expedition to explore the northwestern coast of America with the hope of finding a passage to the South Sea. They were made as secure in the possession of the country as if they had been granted territory in "the manor of East Greenwich in Kent." The only payment required for the grant by the king was the annual assessment of "two elks and two black beavers." The company became very strong and rich. They finally merged with the Northwestern Fur Company, which had been formed when it was learned of the wealth awaiting such an enterprise. After the Revolution, they expanded all over the northwest, and threatened the Spanish settlements in California and the American settlements on the Oregon, or Columbia river. Possessing the exclusive right to trade with the Indians of the northwest, they became intensely interested in the settlement of the boundary that should separate their fields of profit from the territory of the United States. They brought great pressure to bear upon the mother country, with the result that the English commissioners to settle the bound-

* Writings of Albert Gallatin.

† History of Canada. Kingsford.

ary were extremely tenacious of every foot of territory, even though their claims were far weaker than those of the United States. After the failure in 1807 to settle the boundary dispute, no further action was taken by either government, owing to the general war in Europe and to the war between Great Britain and the United States, until 1814.

In the draft of the original protocol looking to the termination of the War of 1812, the American commissioners requested that there should be a revision of the boundary line between the territories of the United States and those of Great Britain adjoining them in North America, to which the British commissioners agreed.* This was in August, 1814. The latter also requested that the line from Lake Superior to the Mississippi should be revised. When asked if they did not mean from the Lake of the Woods to the Mississippi, they replied that they meant from Lake Superior to that river. To this the American commissioners properly replied that "under the alleged purpose of opening a direct communication between two of the British provinces in America, the British Government require a cession of territory forming a part of one of the States of the American Union, and they propose without purpose specifically alleged to draw the boundary line westward not from the Lake of the Woods as it now is, but from Lake Superior. It must be perfectly immaterial to the United States whether the object of the British Government in demanding the dismemberment of the United States, is to acquire territory as such or for purposes less liable in the eyes of the world to be ascribed to the desire of aggrandizement. Whatever the motive may be and with whatever conscious views of conquest may be disclaimed, while demanding for herself or for the Indians a cession of territory more extensive than the whole island of Great Britain, the duty marked out for the undersigned (the American commissioners) is the same. They have no authority to cede any part of the territory of the United States, and to no stipulation to that effect will they subscribe. The conditions proposed by Great Britain . . . are above all dishonorable to the United States, in demanding from them to abandon territory and a portion of their citizens; to admit a foreign interference in their domestic concerns, and to cease to exercise their natural rights on their own shores and in their own waters. A treaty concluded on such terms would be but an armistice. . . . It is with deep regret that the undersigned have seen that other views are entertained by the British Gov-

* American State Papers.

ernment, and that new and unexpected pretensions are raised, which if persisted in must oppose an insuperable obstacle to a pacification. It is not necessary to refer such demands to the American Government for its instruction. They will only be a fit subject of deliberation when it becomes necessary to decide upon the expediency of an absolute surrender of national independence." This stinging rebuke, so amply merited by the unblushing effrontery of the British commissioners, was another intimation, in addition to the declaration of war in 1812, that the time had come for all European governments to cease regarding the United States as unwilling or unable to defend their rights as to territory and sovereignty. The only inexplicable feature in the diplomatic negotiations of that time is the yielding attitude of the American commissioners as regards the northern and northwestern boundaries.

Finally on the 10th of November, 1814, the American commissioners submitted, in a "projet of a treaty of peace," the following proposition to the British commissioners:* "Article VIII. It is agreed that a line drawn due north or south (as the case may be) from the most northwestern point of the Lake of the Woods, until it shall intersect the forty-ninth parallel of north latitude, and from the point of such intersection due west along and with the said parallel, shall be the dividing line between His Majesty's territories and those of the United States to the westward of the said lake, as far as the said respective territories extend in that quarter, and that the said line shall to that extent form the southern boundary of His Majesty's said territories and the northern boundary of the said territories of the United States: provided, that nothing in the present article shall be construed to extend to the northwest coast of America, or to the territories belonging to, or claimed by, either party on the continent of America to the westward of the Stony mountains." The British plenipotentiaries submitted the following counter "projet:" "It is agreed that a line drawn due west from the Lake of the Woods, along forty-ninth parallel of north latitude, shall be the line of demarcation between His Britannic Majesty's territories and those of the United States to the westward of the said lake, so far as the territories of the United States extend in that quarter, and the said line shall to that extent form the southern boundary of His Britannic Majesty's territories and the northern boundary of the territories of the United States. It being always distinctly understood that nothing in the pres-

* American State Papers.

ent article shall be construed to extend to the northwest coast of America, or to territories belonging to, or claimed by, either party on the continent of America westward of the Stony mountains (and it is further agreed the subjects of His Britannic Majesty shall at all times have access, from His Britannic Majesty's territories, by land or inland navigation into the aforesaid territories of the United States to the river Mississippi, with their goods, effects and merchandise, and that His Britannic Majesty's subjects shall have and enjoy the free navigation of the said river)." Of course, the latter proposition was so audacious, not to say insolent, and so different from what had just been talked of, that the intentions of the British envoys were revealed, either to carry their point, or to suspend negotiations wholly on the boundary question. Such suspension was finally agreed to by the commissioners of both governments. Thus the two countries were very far apart in their respective demands. The conciliatory and yielding attitude of the American commissioners* was turned to the advantage of the adroit Englishmen, who amplified their demands in accordance with the submissive policy of the Americans. The indefiniteness of the boundary between the possessions of Great Britain and the United States, enabled the former during the War of 1812 to gain important footholds on American territory along the border, which advantages she claimed as conquests after the war. But the United States insisted on the restoration of the *statu quo*, which demand was finally acceded to by Great Britain. Although the proposed article concerning the boundary west of the Lake of the Woods was omitted from the treaty of December 24, 1814, the following article was agreed to and incorporated in that instrument:*

"Article VII. It is further agreed that the said two last mentioned commissioners, after they shall have executed the duties assigned them by the preceding article, shall be and they are hereby authorized upon their oaths impartially to fix and determine according to the true intent of the said treaty of peace of 1783 that part of the boundary between the dominions of the two Powers which extends from the water communication between Lake Huron and Lake Superior to the most northwestern point of the Lake of the Woods, to decide to which of the two parties the several islands lying in the lakes, water communications and rivers forming the said boundary do respectively belong in conformity with the true intent of the said treaty of peace of 1783, and to cause such parts of the said boundary as

* Treaties of the United States.

require it to be surveyed and marked. The said commissioners shall by a report or declaration under their hands and seals designate the boundary aforesaid, state their decision on the points thus referred to them, and particularize the latitude and longitude of the most northwestern point of the Lake of the Woods, and of such other part of the said boundary as they may deem proper; and both parties agree to consider such designation and decision as final and conclusive."

Under the stipulations of the treaty of Ghent the boundary between Great Britain and the United States from the Atlantic ocean to the river Mississippi was divided into four parts, the fourth division extending from Lake Superior to the most northwesterly point of the Lake of the Woods. The two commissioners appointed for the survey of the fourth division met, explored the line assigned to them, but could not agree. Mr. Porter of New York was the commissioner on the part of the United States to determine the boundary from Lake Superior to the northwesternmost point of the Lake of the Woods. The disagreement of the commissioners was in keeping with the disagreements between the two countries. The British were extremely grasping and exacting, but it cannot be said, whatever else may be asserted, that the United States demanded more than fairness and justice required. The proposition they submitted in 1814, was practically the same as they had submitted in 1807. But Great Britain made new and unfounded demands. They had the assurance to demand the military jurisdiction and control of the Great Lakes, and an acknowledgment of their perpetual right to the navigation of the Mississippi. These being concessions of great value belonging partly to the United States, the latter felt fully justified in demanding compensation therefor; when, therefore, they requested as a consideration, additional rights to the fisheries at the mouth of the St. Lawrence river, they encountered an emphatic refusal. Evidently England was using her utmost endeavors to drain and bleed the country to the utmost, regardless of right or justice. But there is no doubt that the British commissioners were acting under orders to favor as much as possible Hudson's Bay Company.

In all mentions of the Lake of the Woods in connection with the northern boundary, the northwesternmost point of the same is nearly always referred to; but the forty-ninth parallel crosses that lake nearly on the southwesternmost point. One mistake made by the United States was in ever referring to the forty-ninth parallel at all, or in failing to send a surveyor or astronomer to ascertain the exact latitude of the northwesternmost point

of the Lake of the Woods before referring to that parallel. Had the United States displayed the same unfounded greed as Great Britain, the line would have been established in accordance with the partisan slogan of later times, "fifty-four forty or fight." Any person, by looking at a large map of the United States, will perceive a small wedge extending up into the Lake of the Woods. This should be regarded as a perpetual reminder of the wrong done to this country by the want of foresight of the American statesmen of that period. In an hour of weakness, desiring to gain the good will of the British government, they had previously incautiously mentioned the forty-ninth parallel as having been established by the treaty of Utrecht (which establishment has been emphatically disputed) and were, in consequence of this statement, held to that line by the astute British ministry.

Upon a renewal of negotiations for the settlement of the boundary in 1818, the British government showed great earnestness to have the question adjusted; so much so, in fact, as to kindle the suspicions of the Americans that they had some ulterior designs for their own aggrandizement. On July 28, 1818, Mr. Adams wrote to Messrs. Gallatin and Rush as follows:* "From the earnestness with which the British Government now return to the object of fixing this boundary, there is reason to believe that they have some other purpose connected with it which they do not avow, but which in their estimation gives it an importance not belonging to it considered in itself. An attempt was at first made by them at the negotiation of Ghent (1814) to draw the boundary line from Lake Superior to the Mississippi. But, as they afterward not only abandoned that pretension, but gave up even the pretension to an article renewing their right to the navigation of the Mississippi, it was to have been expected that they would thenceforth have considered this western boundary of no importance to them. The new pretension, however, of disputing our title to the settlement at the mouth of the Columbia river, either indicates a design on their part to encroach, by new establishments of their own, upon the forty-ninth parallel of latitude, south of which they can have no valid claim upon this continent; or it manifests a jealousy of the United States—a desire to check the progress of our settlements, of which it might have been supposed that experience would before this day have relieved them. Their projects for the line, both in the negotiation of Messrs. Monroe and Pinckney in 1806 and at Ghent in 1814, were to make the forty-ninth parallel of latitude,

* American State Papers.

from the Lake of the Woods, west, as far as the territories *of the United States* extend in that direction, with a caveat against its extension to the South Sea or beyond the Stony mountains; upon which two observations are to be made: First, that it is uncertain whether any part of the Lake of the Woods is in latitude forty-nine; and, Second, that they always affected to apply the indefinite limit of extension 'as far as the territories extend' to the territories of the United States and not to those of Great Britain, leaving a nest-egg for future pretensions on their part south of latitude forty-nine. The counter-projects for the line on our part, therefore, at both of those negotiations, were, from the northwest corner of the Lake of the Woods, the point already fixed and undisputed, a line due north or south, as the case may be, to the forty-ninth parallel of latitude, and thence along that parallel due west as far as the territories *of both parties* extend in that direction, and adopting the caveat against extension to the Pacific or beyond the Stony mountains."

This statement was made to the American commissioners for their information in the pending negotiations. The first conference leading to the convention of 1818 was held on August 27. On September 17th, the Americans submitted the following proposition for the boundary line: "It is agreed that a line drawn due north or south, as the case may require, from the most northwestern point of the Lake of the Woods, until it shall intersect the forty-ninth parallel of latitude, and from the point of such intersection due west along and with the said parallel, shall be the line of demarcation between the territories of the United States and those of His Britannic Majesty to the westward of the said lake; and that the said line shall form the northern boundary of the said territories of the United States and the southern boundary of His Britannic Majesty's said territories from the said lake to the Pacific ocean; it being distinctly understood that with respect to the territories situated on the northwest coast of America or westward of the Stony mountains, the two high contracting parties intend hereby to define the extent of their respective claims so far only as relates to the two parties and without reference to the claims of any other nation. . . . The navigation of the rivers that fall into the Pacific ocean and which may be intersected by the line of demarcation aforesaid, shall, from the sources of such branches as may be thus intersected, to the ocean, remain free and open to the citizens of the United States and to the subjects of Great Britain. But both parties reserve to themselves the power of regulating, each within their respective territories, the right to the naviga-

tion of the rivers that fall either into the Gulf of Mexico or into Hudson bay."*

The counter-project of the British commissioners agreed to the forty-ninth parallel westward as far as the Stony mountains, but beyond that barrier that the country between the forty-fifth and the forty-ninth degrees "shall be free and open to the subjects and citizens of the two States respectively for the purposes of trade and commerce." They further stipulated that neither country should attempt to exercise sovereignty between those parallels, nor waive any of its rights within the same. They also requested the following privilege: "It is further agreed that the subjects of His Britannic Majesty shall have and enjoy the free navigation of the Mississippi from its source to the ocean, and shall at all times have free access to such places as may be selected for that purpose, in His Britannic Majesty's territories, to the river Mississippi, with their goods, wares and merchandise, the importation of which into the United States shall not be entirely prohibited, on the payment of the same duties as would be payable on the importation of the same article into the Atlantic ports of the United States." The Americans replied that they were "not authorized to agree to any condition that would bring the British in contact with the Mississippi," and that "the right to the navigation of that river could only be derived from the treaty of 1783." They further disagreed with the proposition for a neutral zone from the forty-fifth to the forty-ninth degrees of latitude westward of the Stony mountains. The first break was made by the British in agreeing to the omission of their article respecting the navigation of the Mississippi, which was done on October 13th, 1818. They also withdrew their request for a neutral zone, but reiterated their proposal that the westward extension of the line on the forty-ninth parallel should end at the Stony mountains. They stipulated that the country beyond that point should be and remain free and open to the citizens and subjects of the two powers, leaving the period of such free commerce in that quarter undefined. The Americans practically agreed to this proposition, except that it was proposed that the period should be limited to ten years. This brought the commissioners so near together that the following agreement was finally reached and incorporated into the treaty of October 20, 1818:†

"Article II. It is agreed that a line drawn from the most

* American State Papers.
† Treaties of the United States.

northwestern point of the Lake of the Woods, along the forty-ninth parallel of north latitude, or if the said point shall not be in the forty-ninth parallel of north latitude, then that a line drawn from the said point due north or south as the case may be, until the said line shall intersect the said parallel of north latitude; and from the point of such intersection, due west along and with the said parallel, shall be the line of demarcation between the territories of the United States and those of His Britannic Majesty, and that the said line shall form the northern boundary of the said territories of the United States and the southern boundary of the territories of His Britannic Majesty from the Lake of the Woods to the Stony mountains.

"Article III. It is agreed that any country that may be claimed by either party on the northwest coast of America westward of the Stony mountains, shall, together with its harbors, bays and creeks, and the navigation of all rivers within the same, be free and open for the term of ten years from the date of the signature of the present convention, to the vessels, citizens and subjects of the two Powers; it being well understood that this agreement is not to be construed to the prejudice of any claim which either of the two high contracting parties may have to any part of the said country, nor shall it be taken to affect the claims of any other Power or State to any part of the said country; the only object of the high contracting parties in that respect being to prevent disputes and differences amongst themselves."

The provision of the treaty of 1818 that the country west of the Stony or Rocky mountains should remain free and open to the inhabitants of Great Britain and the United States for the space of ten years, was a serious mistake of the American commissioners, because that entire section was immediately overrun by the trappers of Hudson's Bay Company, who stripped the streams of their immensely valuable supplies of beaver, otter and other furs. Millions of dollars' worth of these furs were taken by the agents of that company from territory which unquestionably belonged to the United States. It was reported by an American trader at St. Louis who conducted trapping operations in the West, that in two seasons, in territory afterward falling to the United States and on one stream only, beyond the Rocky mountains, more than six hundred thousand dollars' worth of valuable furs were taken by Hudson's Bay Company.* And all of this was unwittingly surrendered to the government that had unhesitatingly preyed upon the American colonies from the com-

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*American State Papers.

mencement and had forced them into revolution to secure their natural and political rights.

The most remarkable feature in connection with the negotiations with Great Britain over the northern and northwestern boundaries is the unfairness of the propositions of her commissioners and the tenacity with which they clung to claims without any foundation in justice. England crushed the colonies until they were forced to rebel; her next step was to secure the admission of English goods free of duty; she then brazenly demanded and exercised the right of search and of impressment, until thousands of American citizens were forced into her army or navy or shut up in prison; she next agreed to correct these abuses without any intention of doing so, nor did she, until after the United States had been goaded into war to maintain their rights and their self respect.

But her next action was one of the cruelest blows ever struck the United States: During the War of 1812 the United States, thrown upon their own resources, had established many factories for the manufacture of cloth, iron, and many other products; but the moment peace was secured a treaty of trade and commerce between the two countries was effected, by which the United States was immediately flooded with the immense quantities of goods (that had lain on English shelves while the war lasted) at so low a price that every factory that had started up in this country was crushed to death. The panic, the first of any consequence in the United States, lasted from 1815 until 1821, and was so sweeping and complete in effect that those who passed through that period never forget it until they reached the grave. As an instance may be cited the effects at Pittsburg, where at the close of the War of 1812 the manufactures amounted to nearly three millions of dollars, mostly composed of iron products of all kinds, from seventy-five to one hundred establishlishments. All these, with scarcely an exception, were completely crushed, and idle factories were to be seen on every hand. It was largely through the instrumentality of a Pittsburg man, Mr. Baldwin, that the country was enabled to recover speedily from the results of this distressing period. Every act of England up to this time had thus been directed to her advantage at the unrighteous and galling expense of the United States. She pursued the same course to the end in regard to the northern and northwestern boundaries, and succeeded in wresting from the United States millions of dollars worth of property. Had Spain stood in the shoes of England during the progress of that con-

troversy, the commissioners of the United States would not have been so considerate, not to say humble and subservient.

The attitude of the United States toward Spain over the Floridas and the southwestern Louisiana boundary questions, was altogether different from that toward England over the northern and the northwestern boundary questions. Why? Was it not because nothing was to be feared from Spain, while something like the stab of a knife was to be feared from Great Britain? But please observe herein to what a ruinous extent the unmitigated audacity of the British government enabled her to almost everlastingly outwit and bleed the United States. The policy of Great Britain over the northwestern boundary question was from the start to delay the establishment of a definite line in order to strip the disputed territory of its valuable furs. But none of the American commissioners ever seemed to comprehend this manifest British design; no more than did the American statesmen who permitted the influx of English goods at the close of the war of 1812 upon the payment of so little duty as to amount to nothing. The political system, or perhaps the commercial system, adopted by the United States for the first thirty-five years of its existence, retarded the proper and natural progress of the country nearly a quarter of a century. It was carried to such an extent that many citizens thought the United States could not get along without the products of the English factories. This idea was nurtured and fostered by English agents, sent to this country to persuade the congress and the people of the brotherly and sanctified intentions of the British ministry. But observe how the boundary question was dallied and procrastinated, and how easily the American commissioners were influenced by the views of Great Britain.

The northern boundary of the United States beyond the Rocky mountains, has nothing to do with the Louisiana purchase except from association. The treaty of 1818 settled the boundary westward to the Rocky mountains, which was as far as the purchase extended. But an outline of the negotiations subsequently conducted to settle the line from the Rockies to the Pacific, owing to its association and its importance to the United States, will be briefly stated hereafter. Negotiations to fix that line were resumed in 1823. Again the United States entered the negotiations with vastly improved rights. The treaty of 1819 with Spain had given them all the claims of that country on the Pacific coast north of the forty-second parallel of latitude. In this respect, at least, England had been outwitted by the United States, which first by acquiring Louisiana and then by securing the rights of Spain on the coast above the forty-second degree, had

vastly amplified their rightful claims. The negotiations, therefore, were resumed with great confidence by the commissioners of the United States.

In the protocol of the eleventh conference of the American and British plenipotentiaries, April 1, 1824, it is stated that the American representative Mr. Rush* "opened the subject of territorial claims on the northwest coast of America westward of the Rocky mountains. It having been understood that the pretensions which had been put forward by the cabinet of St. Petersburg, respecting its jurisdiction in that quarter, was to be matter of separate discussion between the respective parties, he observed that, notwithstanding this circumstance, and although the convention of October, 1818, one article of which contained a temporary regulation with respect to the above mentioned claims, had still four years to continue, his Government was of opinion that the present was not an unsuitable moment for attempting a settlement of the boundary on the northwest coast of America westward of the Rocky mountains, and he therefore proceeded to explain the nature of the claims which his Government thought itself entitled to advance." On the following day, Mr. Rush resumed his remarks, and closed with the presentation of the following proposition:*

"Whereas, by the third article of the convention between the United States and his Britannic Majesty, signed at London on the 20th of October, 1818, it was agreed that any country that might be claimed by either party on the northwest coast of America, westward of the Stony mountains, should, together with its harbors, bays and creeks, and the navigation of all rivers within the same, be free and open for the term of ten years from the date of the said convention, to the vessels, citizens and subjects of the two Powers; it having been understood that such agreement was not to be construed to the prejudice of any claim which either of the parties might have to any part of the said country, or taken to affect the claims of any other Power, but only to prevent disputes and differences between the parties themselves; and whereas, it is desirable that the provisions of the said article should be continued for a longer term than as therein specified: It is therefore agreed by the high contracting parties that the same shall continue in force for the full term of ten years from the signature of the present convention. The high contracting parties further agree that during the like term no settlement shall be made on the northwest coast of America, or on any of the islands thereunto

*American State Papers.

adjoining by citizens of the United States north of the fifty-first degree of north latitude, or by British subjects either south of the said fifty-first degree or north of the fifty-fifth degree of north latitude." This proposition was made in consequence of the requests of the British commissioners at previous conferences, and not because delay was desired by the United States. The Americans hesitated over bringing matters to a crisis, and yielded to the request for delay.

Their extremely liberal proposition was not answered by the British representatives until the conference of June 29th, when it was unjustifiably declined, "because it would substantially have the effect of limiting the claims of their Government to a degree inconsistent as they thought with the credit and just interests of the nation." The importance of a settlement was acknowledged, "whereupon the British plenipotentiaries stated in general terms that they were ready either to agree on a boundary line to be drawn due west from the Rocky mountains along the forty-ninth parallel of latitude to the northeasternmost branch of the Columbia or Oregon river and thence down the middle of that river to the ocean, or to leave the third article of the convention of 1818 to its natural course. The American plenipotentiary declared his utter inability to accede to this boundary; but, finding that the line offered in his former proposal was considered wholly inadmissible by the British plenipotentiaries, said that in the hope of adjusting the question he would so far vary his former line *to the south* as to consent that it should be the forty ninth instead of the fifty-first degree of north latitude." Mr. Rush further stated that inasmuch as the United States claimed the whole country watered by the Columbia river, and inasmuch as Spain possessed all the remaining country on the American continent to the south, "he was instructed to insist on the principle that no part of the American continent was henceforth to be open to colonization from Europe." In answer to this statement which has since became famous as the "Monroe Doctrine," the British representatives "asserted in utter denial of the above principle that they considered the unoccupied parts of America just as much open as heretofore to colonization by Great Britain as well as by other European Powers, and that the United States would have no right whatever to take umbrage at the establishment of new colonies from Europe in any such part of the American continent." They added "that they felt themselves more particularly called upon to express their distinct denial of the principle and claims thus set forth by the American plenipotentiary, as his claim respecting the territory watered by the river Columbia and its

tributary streams, besides being essentially objectionable in its general bearing, had the effect of interfering directly with the actual rights of Great Britain, derived from use, occupancy and settlement." The skill with which the British commissioners concealed their real designs deserves to be particularly noted. They desired to gain a foothold below the forty-ninth degree and to have that foothold recognized by the United States. Failing in that they desired the strip of country from the forty-second to the forty-ninth degrees to remain free and open to their agents. And these demands were made in the face of an utter absence of valid claims on their part to any substantial part of the Pacific coast.

At the twenty-third conference on July 13th, the British representatives presented a counter proposition to the effect "that the third article of the convention of 1818 should cease; that the boundary line between the territories claimed by his Britannic majesty and those claimed by the United States, to the west in both cases of the Rocky mountains, shall be drawn due west along the forty-ninth parallel of north latitude to the point where that parallel strikes the great northeasternmost branch of the Oregon or Columbia river, marked in the maps as McGillivray's river, thence down along the middle of the Oregon or Columbia to its junction with the Pacific ocean;" that the channel should be forever free to the inhabitants of both countries; and that no settlements should be formed by the Americans north of that line nor by Britons south of that line. Of course, the Americans refused to accept this proposition. During the discussions, the claims of each party were rigidly scrutinized. Incidentally the question arose as to whether the acquisition of Louisiana by the United States conferred any rightful claim to territory to the westward of the Rocky mountains.

The argument of the British commissioners against the right of the United States to claim an extension of the province of Louisiana westward to the Pacific, was laid before the American commissioners in 1826 in the following language: "1. The United States cannot claim under their treaty with Spain any greater right than Spain then had; and as the Nootka convention has no reference to the discoveries of either party and is unlimited in its duration, they cannot resort to any Spanish discovery in support of their presumed title to any part of the country. 2. As at the time of concluding the Nootka convention Louisiana belonged to Spain and she made no exception to the provisions of that convention on account of any presumed boundaries of that province having been established by former treaties with Great Britain or

of right extending to the Pacific, the United States cannot claim any territory on that ocean as owners of Louisiana, either as a natural extension of its boundaries westwardly, or as implied from the designation of the boundary line (the forty-ninth parallel of latitude) settled between Louisiana and Canada on the one part and the British possessions of Hudson's bay on the other part by the commissioners appointed in pursuance of the treaty of Utrecht. 3. This convention (the Nootka) must be considered generally as having become an international law, at least for the Pacific; superseded the claims ascribed to mere prior discovery; set aside the exclusive pretensions of Spain to the northwest part of the American continent and opened it to the commerce and settlements of all countries whatever, including the United States. 4. Actual occupancy and regard to mutual convenience are therefore the only bases of any arrangement for the establishment of a boundary for the partition between the only Powers having settlements or laying claims thereto of a country which was heretofore held in common."

The claims of the Americans were set forth by Mr. Gallatin to the following effect: "1. The United States claimed a natural extension of their territory to the Pacific ocean, on the ground of contiguity and population, which gave them a better right to the adjacent unoccupied land than could be set up by any other nation. This was strengthened by the doctrine admitted to its fullest extent by Great Britain, as appeared by all her charters, extending from the Atlantic to the Pacific ocean, to colonies established then only on the borders of the Atlantic. How much more natural and stronger the claim, when made by a nation whose population extended to the central parts of the continent, and whose dominions were by all acknowledged to extend to the Stony mountains. If the principle assumed by Great Britain from 1580 to 1732, as related to Atlantic colonies, was correct, she could not deny its application to the United States now owners of Louisiana. The boundary line agreed on by the commissioners appointed in pursuance of the treaty of Utrecht (the forty-ninth parallel of latitude), though falling short of what might be claimed by the United States on other grounds, was offered by them and must at all events be binding on Great Britain. That line was indefinite; it had already been confirmed to the Stony mountains; there was no reason why it should not be continued as far as the claims of both parties extended. In point of fact the occupancy on which Great Britain principally relied, was solely owing to that westwardly extension of their trading settlements of Hudson's bay

and its waters. 2. In right of their own discoveries, viz: the mouth of Columbia river by Captain Gray, and the complete exploration of the river from its most westerly sources to its mouth, before any of its branches had been explored by the British. The United States has a right to claim against Great Britain and every other nation the whole territory drained by that river and its various branches, together with a certain portion of the coast north and south of the mouth of the river. In this also we were supported by the established usages amongst nations, and as adopted by Great Britain in various instances (and amongst others in her charter to the Hudson's Bay Company, which charter extends to all the territory watered by the rivers emptying into the bay). 3. By virtue of their treaty with Spain, the United States claimed all which Spain might have lawfully claimed north of forty-two degrees of latitude, either as derived from Spanish discoveries or by virtue of rights of sovereignty acknowledged by other nations and by Great Britain particularly."*

In commenting on the attitude of Great Britain, Mr. Gallatin wrote that "It must always be kept in mind that Great Britain insists that the whole country west of the Stony mountains is a vacant territory, to which no nation has any exclusive right, which is open to all and to which a title may be acquired and can only be acquired by actual occupancy and settlement." The English commissioners, therefore, desired that the country should remain common or neutral ground for the term of fifteen years longer, without any weakening of the rights of either nation. This request was undoubtedly made at the instance of the Hudson's Bay Company, who desired an unrestricted and unlimited intercourse with the western Indians as far south as possible. This claim was not admitted by the Americans, the strength of whose pretensions lay in their own discoveries and those of Spain, which they had acquired. They insisted on an extension of the boundary along the forty-ninth parallel to the Pacific ocean.

The United States claimed exclusive sovereignty over the country from the forty-second to the forty-ninth degree of north latitude. The British commissioners sought to gain a foothold here by securing from the United States the practical relinquishment of its exclusive claims in permitting the country to remain "free and open" for the term of fifteen years to the citizens or subjects of both nations. But although the Americans finally agreed to a ten year clause, they luckily did not yield their claim to the

* Writings of Albert Gallatin.

exclusive sovereignty of that tract of country. The one object in here presenting these counter claims, is to show whether the United States, under the Louisiana purchase, had any rightful claims beyond the Rocky mountains. The British commissioners said, "The right derived from the cession of Louisiana to the United States, is founded on the assumption that that province, its boundaries never having been exactly defined *longitudinally*, may fairly be asserted to extend westward across the Rocky mountains to the shore of the Pacific. . . . If the title of Spain by first discovery, or the title of France as the original possessor of Louisiana, be valid, then must one or the other of those Kingdoms have been the lawful possessor of that territory at the moment when the United States claim to have discovered it. If on the other hand the Americans were the first discoverers, there is necessarily an end of the Spanish claim; and if priority of discovery constitutes the title that of France falls equally to the ground. . . . The third ground of claim of the United States rests on the right supposed to be derived from the cession to them of Louisiana by France. In arguing this branch of the question it will not be necessary to examine in detail the very dubious point of the assumed extent of that province, since by the treaty between France and Spain of 1763 the whole of that territory, defined or undefined, real or ideal, was ceded by France to Spain and consequently belonged to Spain not only in 1790 when the convention of Nootka was signed between Great Britain and Spain, but also subsequently in 1793, the period of Gray's discovery of the mouth of the Columbia. If then Louisiana embraced the country west of the Rocky mountains to the south of the forty-ninth parallel of latitude, it must have embraced the Columbia itself, which that parallel intersects; and consequently Gray's discovery must have been made in a country avowedly already appropriated to Spain, and if so appropriated necessarily included with all other Spanish possessions and claims in that quarter in the stipulations of the Nootka convention. Even if it could be shown, therefore, that the district west of the Rocky mountains was within the boundaries of Louisiana, that circumstance would in no way assist the claims of the United States. To expose the futility of the attempt to include that district within those boundaries, it is only necessary to refer to the original grant of Louisiana made to De Crozat by Louis XIV shortly after its discovery by La Salle. That province is therein expressly described as 'the country drained by the waters emptying directly or indirectly into the Mississippi.' Now unless it can be shown that any of the

tributaries of the Mississippi cross the Rocky mountains from west to east, it is difficult to conceive how any part of Louisiana can be found to the west of that ridge."*

This argument was combatted by Mr. Gallatin, who among other things said,† "Crozat's grant was not for the whole of the province of Louisiana, as it was afterwards extended by France herself and as it is now held by the United States. It was bounded in that grant of 1712 by Carolina to the east, by New Mexico to the west, and on the north by the Illinois, which were then part of Canada. The most northerly branches of the Mississippi embraced in the grant were the Ohio, at that time called Wabash by the French, and the Missouri, the true course of which was not known at that time, and the sources of which were not supposed to extend north of the forty-second parallel of latitude. No territory on the west of the Mississippi was intended to be included in the grant north of that parallel; and as New Mexico which bounded it on the west was understood to extend even farther north, it was impossible that any territory should have been included west of the sources of the rivers emptying into the Mississippi. All the territory north of the forty-second parallel of latitude claimed by France was included at that time not in Louisiana, but in the Government of New France, as Canada was then called; and by referring to the most authentic French maps, it will be seen that New France was made to extend over the territory drained or supposed to be drained by rivers emptying into the South Seas. The claim to a westwardly extension to those seas was thus early asserted as a part not of Louisiana but of New France. The King has reserved to himself in Crozat's grant the right of enlarging the Government of Louisiana. This was done by an ordonnance dated in the year 1717, which annexed the Illinois to it, and from that time the province extended as far as the most northern limit of the French possessions in North America and thereby west of Canada or New France. The settlement of that northern limit still further strengthens the claim of the United States to the territory west of the Rocky mountains. The limits between the northerly possessions of Great Britain in North America and those of France in the same quarter, namely, Canada and Louisiana, were determined by commissioners appointed in pursuance of the treaty of Utrecht. From the coast of Labrador to a certan point north of Lake Superior, those limits were fixed according to certain metes and bounds, and from that point the line of demarca-

* American State Papers

† Writings of Albert Gallatin.

tion was agreed to extend indefinitely due west along the forty-ninth parallel of north latitude. It was in conformity with that arrangement that the United States did claim that parallel as the northern boundary of Louisiana. It has been accordingly thus settled as far as the Stony mountains by the convention of 1818 between the United States and Great Britain; and no adequate reason can be given why the same boundary should not be continued as far as the claims of the two countries extend—that is to say as far as the Pacific ocean. This argument is not weakened by the fact that the British settlements west of the Stony mountains are solely due to the extension of those previously formed on the waters emptying into Hudson bay. And it is from respect to a demarcation considered as binding on the parties, that the United States had consented to confine their claim to the forty-ninth parallel of latitude, namely, to a territory of the same breadth as Louisiana east of the Stony mountains, although as founded on prior discoveries that claim would have extended much farther north."

In a letter dated June 19, 1826, Mr. Clay said to Mr. Gallatin,* "It is not conceivable that Great Britain has or can make out even a colorable title to any portion of the northwest coast. If she had any claim prior to the treaty of 1763, it was renounced by that treaty, according to which the Mississippi was fixed as the western limit of her territories on this continent. If she acquired any title subsequent to that epoch we have yet to learn how and by what means it was obtained. The settlement at Nootka Sound in 1788 cannot be admitted to have conferred any; but if it did that settlement was north of the line to which we are now willing to agree. By the renunciation and transfer contained in the treaty with Spain of 1819, our right extended to the sixtieth degree of north latitude. By our treaty with Russia of April, 1824, it has been agreed to limit it to the fifty-fourth degree. . . . As by the convention of 1818 the forty-ninth parallel has been agreed to be the line of boundary between the territories of the United States and Great Britain east of the Stony mountains, there would seem to arise from that stipulation a strong consideration for the extension of the line along the same parallel west of them to the Pacific ocean. In bringing themselves to consent to this boundary the Government of the United States feel that they are animated by a spirit of concession and compromise which they persuade themselves that of Great Britain cannot but recognize and ought not to hesitate in reciprocating. You are then authorized to propose the

* American State Papers.

annulment of the third article of the convention of 1818, and the extension of the line on the parallel of forty nine from the eastern side of the Stony mountains where it now terminates, to the Pacific ocean as the permanent boundary between the territories of the two Powers in that quarter. This is our ultimatum and you may so announce it. We can consent to no other line more favorable to Great Britain." Mr. Clay at this time was secretary of state, and Mr. Gallatin was minister to Great Britain. The negotiations at this time resulted in the adoption of the following articles, which were incorporated in the treaty of August 6, 1827:*

"Article I. All the provisions of the third article of the convention concluded between the United States of America and His Majesty the King of Great Britain and Ireland on the 20th of October, 1818, shall be and they are hereby further indefinitely extended and continued in force in the same manner as if all the provisions of the said article were herein specifically recited.

"Article II. It shall be competent, however, to either of the contracting parties, in case either should think fit, at any time after the 20th of October, 1828, on giving due notice of twelve months to the other contracting party, to annul and abrogate this convention and it shall in such case be accordingly entirely annulled and abrogated after the expiration of the said term of notice.

"Article III. Nothing contained in this convention, or in the third article of the convention of the 20th of October, 1818, hereby continued in force, shall be construed to impair or in any manner affect the claims which either of the contracting parties may have to any part of the country westward of the Stony or Rocky mountains."

Thus these articles postponed indefinitely the settlement of the line beyond the Rocky mountains. In 1842 it was mutually determined to again take up the question in the hope that a settlement could be attained, but definite results were delayed by the action of Hundson's Bay Company, who were reaping immense fortunes from such delay. Finally, the two countries in 1846 agreed practically that the boundary line should extend westward of the Rocky mountains along the parallel of forty-nine degrees, except that all of Vancouver's island should belong to Great Britain. But the treaty establishing this line was not ratified, owing to disputes over the small islands between the main land and Vancouver's island; and the controversy was renewed and continued for the space of twenty years, with intermissions for the

* Treaties of the United States.

apparent purpose of getting fresh breath for a still further prolongation of the agony. It was not until 1872 that the emperor of Germany rendered the final decision in the celebrated case, and extended the line through the Canal de Haro, as the United States from the start had demanded as their right. The president of the United States, in his next message, exultingly declared that for the first time in its history the country was free from boundary disputes. Inasmuch as he soon afterward issued a proclamation for national thanksgiving and prayer, it may safely be concluded that he thought the people had something to be thankful for in the amicable settlement of this ancient controversy.

CHAPTER X

The Meaning of the Eighth Article

THE interpretation of the 8th article of the treaty of 1803 between France and the United States became a serious question in 1817, when Baron Hyde de Neuville, envoy extraordinary and minister plenipotentiary of France, dispatched a note of inquiry and protest to Mr. Adams, secretary of state, claiming the infraction of treaty stipulations on the part of the United States. The statements of several masters of French vessels had been received by him he declared "affirming that French vessels are not treated, in the ports of Louisiana, upon the footing of the most favored nations; upon investigation, it not only appears that such is actually the case, but the undersigned has even found that several protests have been [illegible] in vain against this manifest infraction."* The French minister, in this note of December 15, 1817, courteously asked for a reparation of the injury.

Mr. Adams in his reply to this note, under date of December 23, 1817, stated that the vessels of France were treated in the ports of Louisiana on the footing of the most favored nations; that no other foreign nation enjoyed gratuitous advantage there which was not also enjoyed by the French; that in consideration that the vessels of the United States should be admitted to English ports upon payment of the same duty as English vessels, the latter were permitted to enter the ports of Louisiana upon payment of the same duty as American vessels; and that this privilege was thus paid for by the English. The secretary thus continued:

"The 8th article of the Treaty of Cession stipulates that the ships of France shall be treated upon the footing of the most

* American State Papers.

favored nations in the ports of the ceded territory; but it does not say, and cannot be understood to mean, that France shall enjoy as a free gift that which is conceded to other nations for a full equivalent.

"It is obvious that if French vessels should be admitted into the ports of Louisiana upon payment of the same duties as the vessels of the United States, they would be treated, not upon the footing of the most favored nation, according to the article in question, but upon a footing more favored than any other nation, since other nations, with the exception of England, pay higher tonnage duties, and the exemption of English vessels is not a free gift, but a purchase, at a fair and equal price."

The secretary continued by saying that a more extensive construction of the aritcle in question was inconsistent with the constitution of the United States, and that the articles of the treaty were incompatible with a different construction, since one of them purported to cede the territory to the United States "in full sovereignty," and another declared that its inhabitants "shall be incorporated in the union of the United States, and be admitted as soon as possible, according to the principles of the federal constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States."

The secretary concluded his note as follows: "The undersigned is happy to be authorized to add, that the government of the United States is willing to extend to France, not only in the ports of Louisiana, but in those of all the United States, every advantage enjoyed by the vessels of Great Britain, upon the fair and just equivalent of reciprocity; and that in the meantime the vessels of France shall be treated in all the ports of the United States, including Louisiana, on the footing of the most favored nation, enjoying gratuitously every favor indulged gratuitously to others, and every conditional favor upon the reciprocation of the same to vessels of the United States in France." *

But this construction of the articles in question, and of the treaty as a whole was not satisfactory to the French minister, who proceeded to give it an entirely different direction. He said: "I shall, in the first place, have the honor to observe, that France asks not for a free gift; she claims the enjoyment of a right, which it is not even necessary for her to acquire, since it proceeds from herself, being a right which, when she consented to dispose of Louisiana, she had power to reserve for the interest of her trade, and the actual reservation of which is established,

* American State Papers.

not implicitly, but in the most precise and formal terms, by the 8th article of the Louisiana treaty. France, I repeat it, asks no free gift, since the territory ceded is the equivalent already by her for all the clauses, changes and conditions, executed, or which remain to be fulfilled, by the United States; and which, principally, consist in the 7th and 8th articles of the treaty and first of the convention."

The arguments presented by the French minister in support of his construction of the treaty stipulations were artfully drawn and persistently urged. With ready skill he shifted his claims as a study of the articles in question widened his horizon. Many associated questions were brought into the discussion, and several years elapsed before the controversy was concluded.

He argued that "if the 8th article of the Louisiana Treaty had no other object but that of securing to France a conditional advantage in the ports of Louisiana, the terms usually employed in other treaties would have been employed here also, instead of so precise a stipulation of an unconditional and perpetual advantage in favor of France," that "in all the treaties between France and the United States, the condition of reciprocity is positively mentioned;" that as one of the objects of the treaty was to remove all sources of misunderstanding, why was reciprocity not stipulated?; that the positive refusal of the house of representatives in 1801 to ratify a convention with France founded on reciprocity of advantage, could not be reconciled with the silence of the same house in 1803 respecting this unconditional and unlimited favor secured to France; that the only natural inference was that in 1801 the question was on a convention or treaty of amity and commerce, while in 1803 the question was one of sale or cession, an altogether different question governed by different principles and consequences; that the negotiators of the treaty of 1801 could not have forgotten to mention that the citizens of the two nations should be treated reciprocally each in the ports of the other upon the footing of the most favored nations, since this principle of reciprocity was in almost every instance the *sine qua non* of preceding commercial conventions; and that the negotiators of the treaty of 1803 knew they were not commissioned to settle the commercial interests of the two nations, but were authorized merely to make a contract of sale or cession, which was subject to certain and invariable rules of construction and interpretation.

He insisted that the contention of the American secretary that, if the French interpretation were to obtain, the cession to the United States was that of an imperfect sovereignty, was answered by his admission that such a sovereignty really would have been

so ceded whenever British vessels should enjoy in the ports of Louisiana any gratuitous favor, since French vessels, under the stipulations, must be granted the same favor, thus giving the latter nation the right, by virtue of the treaty, of privileges which the American minister now claimed would mean the grant to the United States of an imperfect sovereignty; that if the United States had the right to grant gratuitous favors to other nations, such favors must also extend to France in the territory ceded; that if such favor was denied to France under a plea of a cession of imperfect sovereignty, no gratuitous favor could be granted to any other nation; that when congress made Louisiana a state in 1812, before the expiration of the twelve years mentioned in article 7, and while three of the twelve years were yet to run, it was reasoned that such a fulfillment of the conditions of the cession was not incompatible with the exercise of the full and absolute rights of sovereignty; that when France ceded Louisiana and ceased to be the sovereign of the country it did not cease to hold property therein, since it reserved such property from the cession; that France claimed only the enjoyment of what is her property, in no way an infringement of the sovereignty of the United States.

He demanded that French vessels, under the 8th article, should be treated without restriction upon the footing of the most favored nations in the ceded ports, regardless of whether such treatment was in consequence of a gratuitous or a conditional concession; that French vessels are not so treated in the ports of Louisiana, the vessels of Great Britain being at the present time the most favored; that to demand an equivalent from France because England was required to pay or grant one "would, in a measure, be requiring her to purchase what is already her own property, and obliging her to pay twice for the same thing;" and that he (the French minister) hoped he should be able soon to inform his court "that the President has been pleased to issue such orders as will cure in future the execution of the 8th article of the Louisiana Treaty, and the immediate reimbursement of the duties which have been unjustifiably levied to this day."*

After this elaborate exchange of views, without reaching any conclusive action, the question was permitted to languish for about two years, with an occasional reference thereto, each nation maintaining the justness of its claims and pursuing its previous course. The United States, on the 15th of May, 1820, passed a law levying a heavier tonnage upon French ships than upon those of any

* American State Papers.

other nation. This course was adopted as a measure of retaliation against a similar course pursued by the government of France toward American ships. So irregular and injurious had become the action of each nation toward the other, that a temporary convention was called in 1822 to settle certain important matters of trade, but these regulations were merely temporary—were limited to the period of two years.

It should be noted in this connection that the heavy tonnage duties levied by each nation against the other had the effect of reducing to a nullity the maritime trade between the two countries. In the meantime, the American government, which held heavy claims against France for damages to individuals, steadily pressed for a settlement; but was adroitly avoided by the French diplomats who desired a settlement of the Louisiana cession interpretation conjointly with the settlement of the claims of American individuals. The American minister did not refuse to settle the two conjointly, but did insist that the settlement of one had nothing to do with that of the other, and that if the United States were required to admit the French construction of the 8th article before the individual claims were paid, it meant an indefinite postponement of the ends of justice. This state of affairs became so annoying to the American government that Mr. Adams, in a letter to Mr. Gallatin August 24, 1820, said,

"It is sincerely hoped by the President, that this counteracting and countervailing system will give way to the disposition for an amicable arrangement, in a conciliatory spirit, and with a view to the interests of both parties. The temper which has been manifested in France, not only on this occasion, but in relation to all the just claims of citizens of the United States upon the French government, could not possibly terminate without coming to a crisis; and, at the same time that a positive rejection of the most indisputable demands of our citizens for indemnity was returned for answer to every note which you presented in their behalf, upon the untenable pretense, that the government of the Bourbons cannot be responsible for the outrages of its immediate predecessors, claims equally untenable were advanced and reiterated with the most tenacious perseverance, of privileges, contrary to our constitution, in the ports of the Louisiana founded on an inadmissible construction of an article in the treaty for the cession of Louisiana.

"If the construction contended for of that article by France were even correct, how can the present government claim any advantage from a compact made with Napoleon, after an explicit declaration, that they hold themselves absolved from all obligations of

indemnities due to the United States and their citizens for his acts? I mention this now, because Mr. Roth (Chargé d'Affairs of France at Washington) informs me that he has directed the French consul at New Orleans to protest against the execution of the act of the 15th of May, 1820, specially in the ports of Louisiana. . . . The pretense is, that by the 8th article of the Louisiana Treaty, French vessels are to be forever treated in that province on the footing of the most favored nation; and, on the strength of this, they claim to be admitted there paying no higher duties than English vessels. Our answer is, that English vessels pay there no higher or other duties than our own—not by favor, but by bargain. England gives us an equivalent for this privilege; and a merchant might as well claim of another, on the score of equal favor, that he should give a bag of cotton or a hogshead of tobacco to him, because he had sold the same article to a third, as France can claim as a gratuitous favor to her that which has been granted for valuable consideration to Great Britain. The claim to which we admit that France is entitled under that article, is to the same privilege enjoyed by England, upon allowing the same equivalent. That is completely and exclusively our treatment of the most favored nation, and to that we are not only willing, but desirous of admitting France. But even to that she can have no pretense, while she refuses to be responsible for the deeds of Napoleon. If she claims the benefit of his treaties, she must recognize the obligations of his duties and discharge them."*

Under date of September 19, 1820, Mr. Gallatin communicated to Mr. Adams that in a conversation which he had had on the 12th inst. with Mr. Pasquier, the latter stated that the French government "considered the discussion of the 8th article of the treaty of April 30, 1803, as inseparable from that of the discriminating duties, since France claimed under that article an exemption in Louisiana from the new American tonnage duty, and generally from all those to the payment of which any other nation was not liable;" that he (Mr. Gallatin) had expressed his conviction that the government of the United States would certainly consider the construction of the article, for which France contended, as altogether inadmissible; and that the discussion of the eighth article with Baron de Neuville would be useless, since it was evident that he (Mr. Gallatin) could not, without special instructions, accede to the construction assumed by France.

Baron de Neuville informed Mr. Gallatin that he considered

* American State Papers.

it susceptible of proof that the essential compensation made to France for Louisiana was the condition stipulated in the eighth article of the treaty—was, in fact, the real price paid for Louisiana, and that the sum of money paid was but an accessory; that if the eighth article was inconsistent with the constitution of the United States to such a degree as to render it out of the question to comply with its provisions, the United States should make some other concession or compensation acceptable to France.

In reply, Mr. Gallatin declared that "in every case, the vessels of the nation which France now considered more favored than her own, were put in all the ports of the United States, including those of Louisiana, on the same footing as American vessels, on the express and reciprocal condition that the American vessels should, in the ports of that nation, be treated on the same footing as indigenous vessels. He insisted that what France claimed was, to enjoy the privilege without fulfilling the condition on which it was granted, that her vessels should be treated, in Louisiana, on the same footing as American vessels, while American vessels coming from Louisiana should, in her ports, continue to be subject to any discriminating duties she might be pleased to impose. She asked, in fact, to be treated not as favorably, but more favorably, than the nations she called most favored. The stipulation to place a country on the footing of the most favored nations necessarily meant, that, if a privilege was granted to a third nation for an equivalent, that equivalent must be given by the country which claimed the same privilege by virtue of such stipulation."

He further argued that the treaty to which Baron de Neuville referred in his former argument was that of February 6, 1778, by the second article of which "it is agreed that neither of the contracting parties shall grant any particular favor to other nations, in respect of commerce and navigation which shall not become common to the other party who shall enjoy the same favor gratuitously, if the concession was gratuitous, or on allowing the same compensation, if the concession was conditional;" that the latter words were inserted for greater caution to define what was meant by the stipulation—were mere surplusage, could be omitted without affecting the meaning, and had consequently been omitted in subsequent treaties. In answer to Baron de Neuville's objection that the article, under the American construction, would be of no value to France, Mr. Gallatin stated that it would fulfill its avowed object, which was to enable France to trade at all times in New Orleans on terms not more, but as

advantageous, as any other nation—that it was a privilege which could be denied any other nation, but could not be denied France.*

Under date of October 19, 1820, and October 23, 1820, Mr. Gallatin wrote to Mr. Adams that in his opinion the French government had insisted on settling the Louisiana treaty construction and the question of discriminating duties together, more with the hope that the United States would make some other important concession than to force an acceptance of their construction of article 8; and that, as the new tonnage duty of the United States exceeded that of France, which it was designed to countervail, there might be some foundation to the French distinction between the old discriminating, and the new tonnage, duty of the United States.

On February 23, 1821, Baron de Neuville reopened the question by requesting from Mr. Adams a reply to his last note regarding the construction of the 8th article. He stated that should the United States agree to the French construction, the controversy would end; "but if, after a thorough investigation, the United States shall still adhere to a contrary opinion, you will think with me, sir, that it is material to both parties to know *how far* they disagree on this very important article of the treaty." He concluded by declaring that all France wanted was her rights under the provisions of the treaty, and that it appeared to him "that the negotiators on either part had but one and the same object, in inserting the 7th and 8th articles, which express intention was to secure forever to French vessels in the ports of the ceded territory, a real advantage over those of all other nations." It will be observed from this extract that, while the French minister presented even a broader claim than he had previously done, in construing the article to mean that the vessels of France should have a real advantage over those of all other nations, he had receded from his positive position, and was willing to learn "how far" the two parties to the controversy disagreed.

The tone of the French diplomats became more conciliatory. Mr. Gallatin, in March, 1821, informed the state department that a Frenchman high in authority had suggested, as a means of settling the controversy, a prolongation of the privileges granted to the French government, for the period of twelve years, as a substitute for the claim of perpetual advantage; and that another gentleman, equally high and influential, referred to the necessity, on the part of the United States, of granting some con-

* Writings of Albert Gallatin

cession that would enable the French diplomats to descend becomingly without abandoning totally the ground they had taken.

The whole question was again discussed in all its bearings, and all the previous arguments, together with many additional ones, were introduced with great force by each side. Mr. Adams dwelt with much stress on the point that the other countries had granted reciprocity as an equivalent for the privilege of trading in American ports on the same footing as American vessels, but that France had failed or refused to grant such equivalent, and as a consequence countervailing duties had been passed by both governments. To this the French minister replied that France had reserved as a vested right, from the cession, to be treated in the ports of Louisiana upon the footing of the most favored nations unconditionally and without further compensation on her part. Mr. Adams declared that the 7th and 8th articles could not have been the Spanish equivalent, because the equivalents were framed in two separate conventions of the same date, and that the articles showed on their face that they formed no port of the equivalent.* Baron de Neuville answered that "no nation can acquire by treaty or commercial convention, in the ports of Louisiana alone, the advantage which France enjoys there by special title—by virtue of a bargain and sale." Mr. Adams pointed out that should the French construction prevail, the United States would be forever debarred from contracting with any other country than France—would practically abdicate to France the control of American sovereignty throughout all the states, and asked if the American negotiators could possibly have had in view any such result? The baron replied that neither what the American negotiators intended, nor the question of American constitutionality concerned France, but what the articles actually meant on their face, was the question at odds. Mr. Adams insisted that the articles could not by any reasonable construction be made to mean what the French government demanded, and that no "implication could be more violent and unnatural than that, by a stipulation to treat the ships of France on the footing of those of the most favored nations in the ports of Louisiana, the United States had disbarred themselves forever from purchasing a commercial advantage from any other nation, without granting it gratuitously to France." But the French minister persisted in his contention that France owed, and could owe, no reciprocity, because the privilege

* Life of J. Q. Adams.

† American State Papers.

reserved was one of the equivalents of the bargain, and that the intention of the negotiators in these particulars could admit of no doubt.

Many subsidiary points were brought into the controversy, but cut no important figure. The discussion was again permitted to languish until October, 1821, when Baron de Neuville insisted either on a compliance with the French construction, or on a compromise on lines already proposed, but no further action seems to have been taken at that time. The American minister realized that delay would likely accomplish what diplomacy failed to effect.

In a conference with Mr. Gallatin at Paris in September, 1822, Jh. de Villile, minister of finance, charged ad interim with the portfolio of foreign affairs, expressed a wish to have all the claims of the two nations mutually settled, at one convention called for the purpose. Mr. Gallatin objected to connecting the Louisiana construction question with the claims for individual indemnity, and indicated that the two were wholly distinct, and that the settlement of the latter should not be made dependent upon the settlement of the former. Later he wrote to Mr. Adams that the French intentionally blended the two questions with the evident design of defeating or postponing the payment of the individual claims. He stated that the French apparently intended to make their claims under their construction of the Louisiana treaty offset the American claims for spoliations on their trade. But the French insisted that all the claims must be settled at one and the same time in a consular convention called for that purpose. In the course of these interviews, Mr. Gallatin went so far as to inform the Duke of Montmorency that the attitude of the French government in insisting on connecting the settlement of the two subjects "would be considered in the United States as an attempt to avoid altogether the payment of the indemnities due to our citizens."* Again, in February, 1823, in a letter to Viscount de Chateaubriand, he reviewed the whole question, and stated that there could not be the least expectation that the United States would alter their view or acquiesce in the French construction, and declared that the refusal of France to settle the American claims, unless the construction question was settled at the same time, was inconsistent with the demands of justice and meant that France intended the indefinite postponement of the payment of American claims. Thus, apparently, the deadlock was stronger than

*Writings of Albert Gallatin.

ever. Both governments dropped the subject, hoping that time would give them the advantages contended for.

As time passed, the commercial affairs between the two countries became more strained, complicated and embarrassing. The acts of congress of May 15, 1820, and the ordinance of July 20, 1820, together with previous enactments, practically drove French trading vessels from the American ports. The tariff law of the United States which went into operation January 1, 1829, still further increased the difficulties of commerce; but seems to have been the straw which broke the camel's back, for two years later the contentions which had lasted for more than a quarter of a century were amicably settled.

In the convention between the two countries, which was concluded July 4, 1831, and ratified February 2, 1832, the differences dividing the two countries were concluded to the apparent satisfaction of both governments. By the following article of the treaty adopted at this convention, the question of construction of the 8th article of the Louisiana cession treaty of 1803 was settled for all time:*

"Article VII. The wines of France, from and after the exchange of the ratifications of the present convention, shall be admitted to consumption in the States of the Union at duties which shall not exceed the following rates, by the gallon (such as it is used at present for wines in the United States), to-wit: Six cents for red wines in casks; ten cents for white wines in casks; and twenty-two cents for wines of all sorts in bottles. The proportion existing between the duties on French wines thus reduced, and the general rates of the tariff which have been in operation the first of January, 1829, shall be maintained, in case the government of the United States should think proper to diminish those general rates in a new tariff. In consideration of this stipulation, which shall be binding on the United States for ten years, the French government abandons the reclamations which it had formed in relation to the 8th article of the treaty of cession of Louisiana. It engages, moreover, to establish on the long staple cottons of the United States, which, after the exchange of the ratifications of the present convention, shall be brought directly thence to France by the vessels of the United States, or by French vessels, the same duties as on short staple cottons."

It should be stated that this convention provided for the settlement of the claims of American citizens against France and of

* Treaties of the United States.

those of French citizens against the United States. It was agreed that France should pay to American citizens twenty five million francs, and the United States should pay to French citizens one million five hundred thousand francs. Thus, in the end, the American individual claims and the construction of the 8th article of the Louisiana treaty were settled at the same time, as France had insisted at the outset. Although the French diplomats were compelled to recede from their construction of the 8th article, and from their reclamations under that article, they secured for ten years immense advantages in a reduction of tariff duties. There can be no doubt that the construction put upon the 8th article by France was not justified by the language of that article. What her ministers expected to accomplish by the contention, is a matter of pure speculation. What they received was more than they merited under the treaty of 1803.

CHAPTER XI

Boundaries of the Territories and States

WHEN the province of Louisiana was purchased by the United States in 1803, every boundary of the acquisition was undetermined, save the one on the Gulf of Mexico and the one extending in the middle of the Mississippi river from its source to the thirty-first degree of north latitude, a few miles south of Natchez, Miss. Perhaps, also, it may be correctly said that on the northwest the line was definitely established in that particular chain of the Rocky mountains which separated the waters of the Missouri river from those which flowed westward into the Pacific ocean. But the latter line was really undetermined, having never been definitely located and surveyed, and perhaps never seen or explored. All the other boundaries of the province had never been located nor agreed upon. The one in the middle of the Mississippi river north of the thirty-first degree of north latitude was definitely established at the peace of 1782-3 at the close of the Revolutionary war. As it afterward transpired that the source of the Mississippi was much south of the Lake of the Woods, the boundary of the Louisiana Purchase between those two points was likewise undetermined.

After the treaty of 1782-3 which terminaten the Revolution, the line in the middle of the Mississippi from the source of that river to the thirty-first degree of north latitude, referred to in that treaty, was disputed by Spain, who claimed farther to the eastward than the Mississippi by reason of conquests made during that war, notably at Natchez, Walnut Hills (Vicksburg), Chickasaw Bluffs (Memphis), opposite the post at the mouth of the Arkansas river, and at St. Joseph, Mich. But this

claim was emphatically rejected by the United States, and in the end, before the transfer of Louisiana to this country, this line was made the eastern boundary of the province from the source of the Mississippi to the thirty-first degree of north latitude.

Thus, as narrated elsewhere, the boundaries of Louisiana on the east, from the thirty-first degree to the Gulf; on the west, from the Gulf northwest to the British possessions; and on the north, from the western boundary, wherever it should be, to the northwest corner of the United States, were undetermined and yet remained to be adjusted. The treaty of 1818 with Great Britain settled the northern boundary, and the treaty of 1819 with Spain settled the two boundaries from the thirty-first degree in the Mississippi to the Gulf on the east, and from the Sabine to the forty-second degree of north latitude on the west. The western boundary from the forty-second to the forty-ninth degree, was never seriously disputed, or was wholly settled by the treaties with Spain and Great Britain above mentioned. But it must be observed, that the United States had a perfect title, under the claims of France, to all the territory on the west of the Mississippi drained by its tributaries, and that in permitting Spain to have the country drained by the southern branches of Red river, by the sources of the same river and by the sources of the Arkansas river, it relinquished a just claim to a tract of territory large enough to form a state. As is well known, this relinquishment was compensated for to the satisfaction of the United States by the extension of Louisiana to the Sabine and by Spanish concessions in West Florida. The United States at this time wanted both banks of the Mississippi at its mouth, and was willing to sacrifice a portion of its claims farther to the west. That the upper Red river and the upper Arkansas river countries were surrendered to Spain for the purpose of gaining advantages east of the Sabine and in West Florida, will not be disputed after the diplomatic correspondence between Spain and the United States from 1803 to 1821 is read. Such was the evident intention of the two countries.

As soon as it was decided by congress to accept the cession of Louisiana, steps were taken for the exploration, subdivision and government of the province. By act approved March 26, 1804, the purchase was separated into two divisions, as follows: "That all that portion of country ceded by France to the United States under the name of Louisiana, which lies south of the Mississippi Territory and of an east and west line to commence on the Mississippi river at the thirty-third degree of north latitude and to extend west to the western boundary of the said cession, shall

constitute a Territory of the United States under the name of the Territory of Orleans. . . . The residue of the Province of Louisiana ceded to the United States shall be called the District of Louisiana, etc." It was provided that this act should take effect October 1, 1804. A governor was at once appointed for the Territory of Orleans, but the District of Louisiana was placed under the executive authority of the governor of Indiana Territory, who was empowered to subdivide the District into subdistricts. Thus the Territory of Orleans embraced the present state of Louisiana and no more, unless it be contended that at that time the province extended to the westward of the Sabine. On the other hand, the District of Louisiana embraced all of the present Arkansas, Missouri, Iowa, North Dakota, South Dakota, Nebraska, Indian Territory, and parts of Minnesota, Kansas, Oklahoma Territory, Colorado, Wyoming and Montana.

In the United States senate, it was moved November 28, 1803, "That a committee of —— members be appointed to prepare a form or forms of government for the Territory of Louisiana." The members of this committee were appointed December 5, and were Messrs. Breckenridge (chairman), Wright, Jackson, Baldwin and Adams. In the original draft of the bill to divide the province into the Territory of Orleans and the District of Louisiana, the following language was used concerning the latter: "The residue of the Province of Louisiana ceded to the United States, shall remain under the same name and form of government as heretofore, save only that the executive and judicial powers exercised by the former government of the province shall now be transferred to a Governor to be appointed by the President of the United States." Upon the final passage of the bill in the senate, the vote stood, ayes 20, nays 5, the latter being Messrs. Olcott and Plumer of New Hampshire, Hillhouse of Connecticut, Adams of Massachusetts, and Stone of North Carolina. In the house the vote stood, yeas 66, nays 21.

By the act of March 2, 1805, congress provided that when the white inhabitants of the Territory of Orleans should aggregate 60,000, it might be admitted into the Union as an independent state; but it was "Provided, however, that Congress shall be at liberty, at any time prior to the admission of the inhabitants of the said Territory to the right of a separate State, to alter the boundaries thereof as they may judge proper: except only, that no alteration shall be made which shall procrastinate the period for the admission of the inhabitants thereof to the rights of a State Government according to the provision of this act." It was at this time that great efforts were made to secure the admis-

sion of Louisiana (Orleans Territory) into the Union, but all such attempts failed, owing mainly to the lack of the necessary population and to the belief in the eastern part of the United States that it was a matter of wisdom to keep the Territory in a subordinate condition until the inhabitants had learned still more of the duties and requirements of American citizenship. The act of March 3, 1805, provided "That all that part of the country ceded by France to the United States under the general name of Louisiana, which by an act of the last session of Congress was erected into a separate district to be called the District of Louisiana, (Missouri), shall henceforth be known and designated by the name and title of the Territory of Louisiana;" and it was provided that the act should be in force from and after July 4, 1805. The principal argument employed by the inhabitants of Louisiana for admission to statehood, was that the language of the treaty required their admission "as soon as possible," and not at the will of congress or the president. Immediate admission was their right under the cession treaty.

In the house of representatives, in 1804, Mr. Moore introduced a resolution instructing the committee of commerce and manufactures to inquire into the expediency of authorizing the president to employ persons to explore such part of the Province of Louisiana as he may deem proper. He said: "The Government were not in possession of a good geographical description of Louisiana, which it was very desirable that they should possess, inasmuch as its limits were not completely designated in the articles of cession, and as the time might not perhaps be distant when its boundaries may be a subject of negotiation between the former owners of the province and the United States." The resolution was agreed to. The immediate result of this resolution was the Lewis and Clark expedition. It was the beginning and the basis of the many subsequent explorations and surveys of the territory of the Louisiana Purchase.

On the 3d of December, 1804, Mr. Nicholson presented in the house a memorial from the inhabitants of the province of Louisiana, signed by two thousand heads of families, making several requests, among which was the following: "They therefore pray an alteration of the law so far as to allow them to be their own legislators, not dividing the Territory into two governments, and not prohibiting the importation of slaves." Another of a similar import was presented in January, 1805. The prayer of the memorialists was disregarded, because it was argued that the sooner the people of Louisiana became familiar with the laws and customs of the United States, the sooner their

admission to the Union would be permissible. It was desired that all the people of the country should be homogeneous in pursuits, habits and occupations, which could not be effected if the people of any portion were permitted to have different laws and institutions.

The bill for the division of the province into two territories limited the Territory of Orleans east of the Mississippi river to the country claimed by the United States south of Mississippi Territory, or, in other words, to such portion of West Florida as should fall to the United States in subsequent negotiations with Spain. The language of the bill did not commit the United States to a positive declaration that its territory extended to the eastward of the Mississippi; but simply left such a construction open as a basis for its claims that the Louisiana ceded by France did extend to the Perdido. The southern boundary of Mississippi Territory had been established by act of congress of April 7, 1798, as follows: "That all that tract of country bounded on the west by the Mississippi, on the north by a line to be drawn due east from the mouth of the Yazoo to the Chattahoochie river; on the east by the river Chattahoochie; and on the south by the thirty-first degree of north latitude, shall be and hereby is constituted one district to be called the Mississippi Territory." Thus the Territory of Orleans was bounded on the north by the thirty-third parallel west of the Mississippi (its present boundary); and by the thirty-first parallel east of the Mississippi, should West Florida be ascertained to be a part of the cession by France.

In March, 1810, the house of representatives and the legislative council of the Territory of Orleans presented a petition praying for admission into the Union, although "our territory, though vast, cannot admit of any large increase of population. Nearly all the lands conveniently situated are occupied; immense swamps cover a great proportion of the remaining part of the country, and such uninhabited lands as are cultivable are chiefly to be found towards the limits of our territory." This bill was prepared and read in the senate for the first time on April 9, 1810. It passed the senate April 27, 1810, by the following vote: yeas 15, nays 8. When the bill came up in the house, a motion to postpone it indefinitely was lost, yeas 28, nays 78. In the house bill the following language was employed in regard to the limits of the proposed new state: "That said State shall be composed of all that part of the territory or country ceded under the name of Louisiana by the treaty made at Paris April 30, 1803, between the United States and France, now contained within the limits of the Territory of Orleans, except that part lying east of the

river Iberville and a line to be drawn along the middle of the Lakes Maurepas and Pontchartrain to the ocean." With this description, the bill passed the house by 77 yeas and 36 nays. Mr. Tait, senator from Georgia, and chairman of the committee to whom the bill was referred, reported the following boundary: "Beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the Mississippi river; thence down the said river to the southern boundary of the Mississippi Territory; thence along the said boundary line to Pearl river; thence down the western bank of the said river to Lake Borgne; thence along the middle of said lake to the Gulf of Mexico, thence bounded by the said Gulf to the place of beginning; . . . Provided, however, That the Government of the United States hereby retains the power of altering, in any manner it may hereafter deem proper, the limits of all that portion of the said described territory which lies east of the river Mississippi and the island of New Orleans." Under this bill a portion of West Florida was to be positively attached to Louisiana. This action was proposed before the United States had decided to occupy a portion of West Florida, and before the inhabitants had set up a separate government. It likewise proposed to extend Louisiana to the Sabine before that river had been settled upon as the boundary between Louisiana and Texas.

Numerous amendments in regards to the boundaries of the proposed new state were offered to the bill. Finally, the following limits were approved February 20, 1811: "Beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands, to the thirty-second degree of north latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and lakes Maurepas and Pontchartrain to the Gulf of Mexico; thence bounded by the said Gulf to the place of beginning." It will be observed that congress thus definitely fixed the middle of the Sabine and the thirty-second meridian for the western boundary of the State of Louisiana, regardless of the fact that the line of demarcation between Texas and Louisiana had not been settled by the two governments—Spain and the United States. But this course was taken upon grounds that could not be overturned—that the Louisiana

purchase extended to the westward as far as that river and that meridian. There was no danger in mentioning that limits for the boundary of the new state. But it was different in regard to West Florida. Congress was not so sure in respect to that province. It was, therefore, thought wise to omit embracing that territory in the State of Louisiana for the present. There was considerable manipulation of the question of limits in both branches of congress. At first the bill to admit Louisiana to statehood was made to embrace positively a portion of the territory east of the Mississippi. This point was considered in the senate in secret session and the bill was read for the first time on January 7, 1811. Many of the senators opposed the secrecy of the deliberations, but were voted down. There was ample justification for secrecy, because the United States was on the point of declaring war against Great Britain, and the president had already given orders for the occupation of West Florida, which might mean war also with Spain. In fact the extension of the limits of Louisiana over West Florida, it was realized, would be abundant cause for a declaration of war from Spain. This was no doubt the principal reason why the act to admit Louisiana did not contain a clause extending the limits to Pearl river at least or to the Perdido at most.

When the bill to admit Louisiana with West Florida or a portion of it came up in the senate, a motion to print it for the use of the senators was lost, yeas 14, nays 16. Another motion to print one copy for each senator, coupled with strict measures of secrecy, was also voted down, yeas 7, nays 23. The act of April 8, 1812, admitted Louisiana to statehood and was to be in force from and after April 30, 1812. All of the State of Louisiana thus formed and the residue of the Territory of Orleans, were constituted one district for judicial and other purposes. The latter clause was framed for the purpose of extending the jurisdiction of the United States over the whole or a portion of West Florida and over the territory claimed by the government west of the Sabine, should future negotiation extend the limits beyond that stream. Finally, by act approved April 14, 1812, congress ordered that, should the legislature of Louisiana consent, the following tract of country be made a part of Louisiana: "Beginning at the junction of the Iberville with the river Mississippi; thence along the middle of the Iberville, the river Amite and the Lakes Maurepas and Pontchartrain to the eastern mouth of the Pearl river; thence up the eastern branch of Pearl river to the thirty first degree of north latitude; thence along the said degree of latitude to the river Mississippi; thence

down the said river to the place of beginning." This was a positive step by congress, before the right of the United States to that territory had been adjusted with Spain; but was abundantly justified by the circumstances. In fact, the territory had already, under the direction of the president, been occupied by the United States, and this act was designed to sustain such proceedings. The order of the president to occupy the western portion of West Florida and this act of congress, were much more the result of the determination of the government to possess the territory than of the belief that it formed a part of the cession of Louisiana. But the United States was fully justified in its course by the remissness of Spain and the danger that the territory, to which the government had strong claims, would be occupied by Great Britain to the serious injury of this country. By act of June 4, 1812, the title "Louisiana Territory" was changed to "Missouri Territory," the same to take effect from and after the first Monday of December, 1812.

Under date of August 4, 1812, the Louisiana assembly passed the following resolution: "That, whereas, the Senate and House of representatives of the United States of America in Congress assembled, by an act entitled, 'An act to enlarge the limits of the State of Louisiana,' have provided, that in case the Legislature of the State of Louisiana shall consent thereto, all that tract of country comprehended within the following bounds, to-wit: Beginning at the junction of the Iberville with the river Mississippi; thence along the middle of the Iberville, the river Amit and of the lakes Maurepas and Pontchartrain to the mouth of Pearl river; thence up the eastern branch of said river to the thirty-first degree of north latitude; thence along the said degree of latitude to the river Mississippi; thence down the said river to the place of beginning, shall become and form a part of the said State of Louisiana, and be subject to the constitution and laws thereof in the same manner and for all intents and purposes, as if it had been included within the original boundaries of said State. Be it therefore, resolved, and it is hereby resolved, that the Senate and House of Representatives of the State of Louisiana, in general assembly convened, do approve of and consent to the enlargements of the limits of the said State of Louisiana, in manner as provided by the above in part recited act of Congress, hereby declaring that the same shall forever be and remain a part of the State of Louisiana."

Under act of July 5, 1848, it was stated, "That this Congress consents that the Legislature of the State of Texas may extend her eastern boundary so as to include within her limits one-half

of Sabine Pass, one-half of Sabine Lake, also one-half of Sabine river, from its mouth as far north as the thirty-second degree of north latitude." This act was rendered necessary by the fact that under the treaty of 1819 between Spain and the United States, the western boundary of Louisiana was fixed on the western bank of the Sabine river and lake, and included all the islands in both. As waterways then were all important, Texas, when she was admitted, or soon afterward, requested that her eastern boundaries might be extended so as to include the western half of the river and the lake.

The assembly of Missouri Territory, by act of December 31, 1813, created Arkansas county with the following boundaries: "That all that part of the Territory (of Missouri) bounded north by the south line of the county of New Madrid; east by the main channel of the Mississippi river; south by the thirty-third degree of north latitude or northern boundary line of the State of Louisiana; westwardly by the western boundary line of the Osage purchase and by a line to commence upon the river Arkansas where the boundary line of the Osage purchase intersects the same; thence in a direct line to the main source of the Wachita; thence south to the northern boundary line of the State of Louisiana or thirty-third degree of north latitude, shall compose a county and be called and known by the name of the County of Arkansas." A considerable portion of what is now Arkansas was not embraced in this county. Its western boundary thus fixed was then the Indian line. But this was the foundation upon which was later built the State of Arkansas.

By act approved March 2, 1819, the following provision was made by congress: "That from and after the fourth day of July next, all that part of the Territory of Missouri which lies south of a line beginning on the Mississippi river at thirty-six degrees north latitude, running thence to the river St. Francois, thence up the same to thirty-six degrees thirty minutes north latitude; thence west to the western territorial boundary line, shall for the purposes of a territorial government constitute a separate territory and be called the Arkansas Territory." There does not appear to have been any contest over the formation of this new territory. Missouri Territory, to which that tract of country had belonged, made no protest. It meant eventually for the South an additional slave state, and the consequent increased representation in congress from that section of the Union. The enemies of slavery offered no opposition, because they knew they would have an opportunity to fight that institution when application should be made for the admission of

Arkansas into the Union. The western boundary was thus left indefinite in the description of the territorial limits, and was nearly on the line of the old Arkansas county, because the Indian title to what is not western Arkansas had not yet been extinguished. The Territory was intended to embrace all the country east of the Indian lines.

By act approved May 26, 1824, the western boundary line of Arkansas was fixed definitely as follows: "That the western boundary line of the Territory of Arkansas shall begin at a point forty miles west of the southwest corner of the State of Missouri and run south to the right bank of Red river, and thence down the river and with the Mexican boundary to the line of the State of Louisiana, any law heretofore made to the contrary notwithstanding." The sum of two thousand dollars was appropriated to defray the expense of marking this line.

Immediately thereafter the legislature of that Territory divided the strip into counties and the settlers imagined themselves secure in their homes. In 1828, the government, in opposition to the protests of the territorial government of Arkansas, ceded this strip to the Cherokee Indians, and the western boundary of the Territory was brought back and placed where it had been before the act of 1825. After it was thus returned to the Indians, the settlers were required to vacate their farms, which proceeding visited great hardship upon them. In February, 1835, a bill for their relief was introduced in congress. Mr. Vinton, of Ohio, went into the history of the circumstances of the case and remonstrated against rewarding, with a donation of one hundred and sixty acres (as had been proposed), men whose only merit was having trespassed on the public land, and refused to leave what they had seized until compelled by military force. The settlers had located on lands belonging to the government before the same had been thrown into market.

By special act approved May 19, 1828, the president was authorized to conjoin with the officers of Louisiana and Arkansas Territory in running the boundary line between them, beginning in the Mississippi on the thirty-third degree of north latitude, thence west to a point where a due north line on the forty-second meridian, crossing the Sabine river, should intersect the same. The boundary line between Arkansas and Missouri, which had been surveyed pursuant to act of congress, was approved by Arkansas December 23, 1846, and by Missouri February 16, 1847, and was confirmed by the United States February 15, 1848.

In 1834, bills were presented to enable the Territories of Michigan and Arkansas to draft constitutions and form governments

with the view to their admission into the Union. It had become recognized as the custom to admit two states at the same time—one from the North and one from the South, the intention being to keep the representation of the two parties in congress in the same proportion. With this idea in view, when a motion was made in the United States senate to table the resolution to admit Arkansas, the bill to admit Michigan was dropped by general acquiescence. The following is from the senate proceedings of May 12, 1834: "The Senate resumed, as in committee of the whole, the bill to authorize the people of the Territory of Arkansas to form a constitution and State Government, and for the admission of such State into the Union upon an equal footing with the original States in all respects whatsoever; and on motion of Mr. Ewing (of Ohio) that it be laid on the table: yeas 22, nays 20." It was a close party vote, the Democracy voting for the tabling of the resolution. The following is from the senate proceedings of March 22, 1836: "Mr. Buchanan, from the select committee to whom was referred the memorial of the Territory of Arkansas, on the subject, reported a bill to provide for the admission of Arkansas into the States of the Union, which was read and ordered to a second reading." The bill was again considered April 3, 1836. "On motion of Mr. White, of Tennessee, the bill was so amended as to provide more effectually against any difficulties as to the boundary with the western Cherokees." After some debate, the bill was ordered engrossed for a third reading.

On April 4th the bill came up for a third reading. The yeas and nays were ordered, and the various features of the bill were discussed. Among other things, Mr. Benton, of Missouri, said: "It is worthy of notice that on the presentation of these two great questions (the admission of Michigan and Arkansas), those gentlemen who had charge of them were so slightly affected by the exertions that had been made to disturb and ulcerate the public mind on the subject of slavery, as to put them in the hands of Senators who might be supposed to entertain opinions on that subject different from those held by the States whose interests they were charged with. Thus, the people of Arkansas had put their application into the hands of a gentleman representing a non-slaveholding State; and the people of Michigan had put their application into the hands of a Senator (himself) coming from a State where the institutions of slavery existed." But his conclusion that the agitation of the slavery question had died out was wholly wrong, as shown by subsequent events. The reason that the subject of slavery was not discussed upon

the admission of Arkansas was because both parties considered the question to have been settled by the Missouri compromise of 1820. Several of the senators opposed the admission of both Michigan and Arkansas on the ground that their proceedings in preparing constitutions, forming state governments, and demanding admission into the Union, without the previous consent of congress, were irregular and revolutionary. On the final passage of the bill the vote stood: yeas 31, nays 6, the latter being Messrs. Clay, Knight, Porter, Prentiss, Robbins and Swift. The boundaries of the new state were as follows: "Beginning in the middle of the main channel of the Mississippi river, on the parallel of thirty-six degrees of north latitude; running from thence west with the said parallel of latitude to the St. Francis river; thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west to the north bank of Red river by the lines described in the first article of the treaty made between the United States and the Cherokee nation of Indians west of the Mississippi, on the 26th day of May, 1828;' and to be bounded on the south side by Red river and the Mexican boundary line, to the northwest corner of the State of Louisiana; thence east with the Louisiana State line to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of the said river to the thirty-sixth degree of north latitude, the point of beginning."

Article I of the treaty of May 26, 1828, between the Cherokee Indians and the United States, was as follows: "The western boundary of Arkansas shall be, and the same is hereby defined, viz: A line shall be run, commencing on Red river at the point where the eastern Choctaw line strikes said river and run due north with said line to the river Arkansas, thence in a direct line to the southwest corner of Missouri." The Choctaw line referred to above had been defined January 20, 1825, as follows: "Beginning on the Arkansas river one hundred spaces east of Fort Smith and running thence due south to Red river; it being understood that this line shall constitute and remain the permanent boundary between the United States and the Choctaws." In the constitution of the state and in subsequent statutes the boundaries have been variously described, but do not vary as to territory. The constitution of 1836 gave the western boundary as follows: "thence to be bounded on the west to the north bank of Red river, as by acts of Congress and treaties heretofore defining the western limits of the Territory of Arkansas." The con-

stitution of 1864 specified the following boundaries: "Thence to be bounded on the west to the north bank of Red river as by acts of Congress and the treaties heretofore defining the western limits of the Territory of Arkansas." These descriptions meant the boundary as it is at present. The constitutions of 1868 and 1874 did not vary the limits.

By resolution of February 11, 1824, the house of representatives asked the secretary of war, John C. Calhoun, whether the western boundary of Arkansas Territory had been surveyed as provided in the act of March 3, 1823. Mr. Calhoun replied that "the line referred to by the resolution of the House has not been run. Shortly after the termination of the last session of Congress, Gen. Thomas Hinds, of Mississippi and Mr. William Woodward, of the Arkansas Territory, were appointed commissioners to hold a treaty with the Choctaw Indians for the purpose of carrying into effect the provisions of the act abovementioned; and communications were addressed to them by this Department, notifying them of their appointment and enclosing instructions for their government. The communication for General Hinds (who was directed to make the principal arrangement for the treaty), it appears never reached him, owing to some failure of the mails, or other cause, unknown to this Department; that for Mr. Woodward was received by him, of which, however, this Department has only been apprised since the meeting of Congress. Owing to these causes, the proposed treaty with the Choctaws was not held; and consequently the line which depended on the arrangement to be made by the treaty could not be run."

On the 30th of December, 1834, Mr. Sevier, delegate from the Territory of Arkansas, introduced in the house the following: "Resolved, That the President of the United States be requested (if not deemed incompatible with the public interests) to negotiate with Spain for her right and title to the country lying between the Sabine and Red rivers in Arkansas Territory." In support of this resolution, he said in part, "There is a considerable tract of country lying north of the Sabine and south of Red river, upon which many of our citizens have resided for years; a country of which we have had the undisturbed possession and over which we still exercise jurisdiction, that will in all probability, be lost to us forever, if the boundary line designated by the treaty of 1819 between this Government and Spain should be permanently established. I believe Spain to be the rightful owner of this tract of country; and of that Government I presume we can obtain it for a mere trifle. It is true, Mexico claims this country, but I ask what evidence has she of her title? Has she purchased

it? Has she conquered it? . . . Mexico never revolutionized the country north of the Sabine; she never marched a soldier into it; nor has she ever given a dollar for it. Our citizens have held the undisturbed possession of this country from 1800 down to the present day. It is true we ceded it to Spain in 1819 for which she gave us the Floridas. Has Spain ever parted with her right acquired by that treaty?" He continued to the same effect, showing that the Mexican revolutionists had neither conquered, taken possession of, nor bought that tract of country from Spain, and therefore it was still the property of the latter and should at once be bought by the United States. But no action seems to have been taken upon his suggestion.

Mr. Adams, on June 6, 1836, presented in the house of representatives twenty-two memorials and remonstrances to the admission of Arkansas into the Union, from Massachusetts, Pennsylvania and Ohio, on the ground of the proposed establishment of slavery in the new state. Mr. Vinton, of Ohio, moved the following amendment to an act supplementary to an act for the admission of the State of Arkansas into the Union, etc.: "That the 8th section of an ordinance passed by the convention of delegates at Little Rock, assembled for the purpose of making a constitution for the State of Arkansas, which is in the following words: 'All that section of country lying west of the western boundary of the State of Arkansas, which was formerly part of the Territory of Arkansas, under the provisions of an act of Congress, approved the 26th day of May, 1824, entitled, "An act to fix the western boundary of the Territory of Arkansas," and which was ceded by the United States to the Cherokee and Choctaw Indians, whenever the Indian title shall be extinguished to the same, shall be attached to, and form a part of, the State of Arkansas; and when the said Indian title shall be extinguished, the western boundary of the said state shall be in accordance with the provisions of the said act of Congress,' be, and the same is hereby, rejected." The reason for this motion was stated to be the impropriety, while just ceding in perpetuity the territory to the Indians, of providing for its eventual absorption by the United States. This motion was not adopted, but other equivalent changes were made which satisfied the objector.

The act of March 3, 1875, provided "that the boundary line between the State of Arkansas and the Indian country, as originally surveyed and marked, and upon which the lines of the surveys of the public lands in the State of Arkansas were closed, be, and the same is hereby, declared to be the permanent boundary line between the said State of Arkansas and the Indian country."

Section 2 provided that the line should be retraced and re-marked, "and if the original line, when retraced, shall be found to differ in any respect from what the boundary line would be if run in accordance with the provisions of the treaties establishing the eastern boundary line of the Choctaw and Chickasaw nations, then the surveyors shall note such variations and compute the area of the land which in that case would be taken from the State of Arkansas or the Indian country, as the case may be, and the Secretary of the Interior shall also cause any monuments set up in any former survey indicating any line at variance with the survey provided for in this act to be obliterated."

In February, 1879, the commissioner of public lands reported that the boundary between Arkansas and the Indian territory, which had been declared by the act of March 3, 1875, to be the permanent line "varied materially from the boundary described in the treaty with the Choctaws of January 20, 1825, and with the Cherokees of May 6, 1828." It had been found that the line run by the old surveyors between Arkansas and the Indian country from a point "one hundred paces east of Fort Smith" diverged considerably to the west of a due south line, and as a consequence had located the boundary too far to the westward, to the injury of the Indians. The commissioner reported that there had thus been two thousand five hundred and thirty-nine and fifty-four one hundredths acres taken wrongfully from the Cherokees, and one hundred and thirty-seven thousand five hundred and twelve one hundredths acres wrongfully taken from the Choctaws, or a total of one hundred and forty thousand and thirty-nine and sixty-six one hundredths from the two nations. An examination of the sales for this tract showed that only one hundred and thirty-four thousand one hundred and forty-seven and eighty-nine one hundredths acres had been disposed of, leaving considerable of a discrepancy. It was recommended that the Indians should be paid for the land thus wrongfully taken by the government.

On the 29th of December, 1834, Mr. Bynum, of North Carolina, introduced in the house the following: "That the Executive be requested to be caused to be laid before this House, as soon as practicable, such information in relation to the relative positions of the province of Texas, one of the United Province of the Republic of Mexico, and the Government of the United States of North America, as may be in possession of either of the departments, not deemed incompatible with the interests of either of the two Governments; also what progress has been made in distinguishing the boundary lines between this Government and the Republic of Mexico which were to be run in conformity with the

stipulations made and entered into between the Government of Spain and that of the United States, as ratified by the latter in Congress on the 22d of February, 1819. Also, whether any subsequent relations have been entered into between the commissioners of this and the Government of Mexico, to carry into execution the conditions of the above mentioned stipulations posterior to the recognition of the latter Government as an independent republic."

The republic of Texas, by act of December 19, 1836, declared its boundaries to be as follows: "Beginning at the mouth of the Sabine river and running west along the Gulf of Mexico three leagues from land to the mouth of the Rio Grande, thence up the principal stream of said river to its source, thence due north to the forty-second degree of north latitude, thence along the boundary line as defined in the treaty between the United States and Spain to the beginning." It should be observed that by the treaty of January 12, 1828, between the United States of America and the United Mexican States the limits between the two countries were also declared to be the same as those established in 1819 between Spain and the United States.

During the debate on the recognition of Texas in the senate in May, 1836, Mr. Walker, of Mississippi, said, "Look at the maps and observe the extraordinary corners and angles of our present boundary—that boundary, by the treaty of 1819, by which Texas was sacrificed; by which the valley of Mississippi was dismembered; by which the great territories of the Mississippi, the Arkansas for hundreds of miles, and the Red river for a thousand miles were virtually surrendered to Spain; by which the right to navigate the Mississippi was in fact ceded to Spain and a foreign Power placed on Red river within three days of New Orleans; a treaty by which the most valuable territory and the most important harbors on the Gulf of Mexico were given up, an enemy placed within a few hours sail of New Orleans, and the command of the Gulf abandoned; a treaty by which five or six States (in the prospective) were torn from the banner of the American Union." There can be no doubt that many citizens of the United States looked upon the relinquishment of the upper Red river and the upper Arkansas river countries as an unwarranted loss to the United States. Those rivers from their mouths to their sources belonged to the Mississippi river basin, to which France had an undisputed title before the surrender of Louisiana to Spain in 1762-3. The retrocession of 1800 did not change these bounds. They passed to the United States in 1803. But an extension of

the limits of the United States to the sources of the Red and the Arkansas rivers would carry the western boundary to within a few miles of Santa Fe, the capital of the Spanish province of New Mexico. The Spanish ambassador protested against such a proceeding, and his argument was used against him when he demanded the extension of Texas to the eastward of the Sabine, because it would place the eastern boundary of Texas, then a province of Mexico, within a few miles of New Orleans. But it was a time of mutual concessions and sacrifices. The United States, in order to gain at the Sabine and in West Florida, sacrificed the upper Red river and the upper Arkansas river countries. But Mr. Walker was right as regards the title of the United States to that upper country. It belonged to the United States from 1803 to 1819.

On the 17th of May, 1836, Mr. Adams, of Massachusetts, introduced the following in the house: "Resolved, That the President of the United States be requested to communicate to this House, if not incompatible with the public interest, copies of any overture made since the third of March, 1829, by his authority to the Government of the United Mexican States for the acquisition by the United States of any portion of the territory of Mexico; and copies of all correspondence between the two Governments relating thereto, and upon any question of boundary existing between the United States and Mexico."

A convention was concluded between the United States and the government of Texas in April, 1838, one of the provisions of which specified that the boundary between the two countries should be marked and defined. Congress by act, approved February 11, 1839, provided for the appointment of surveyor, commissioner and clerk, and appropriated the sum of ten thousand dollars to defray the expenses on the part of the United States.

When Texas was annexed to the United States in 1845, there was secured, in addition to its present territory, all of New Mexico east of the Rio Grande, the public land strip, the present southwestern corner of Kansas, a large irregular strip extending entirely across the middle of Colorado, and a tract nearly square in the southern part of Wyoming. It was seen by congress that the bounds of Texas as a whole were too large for one state, whereupon congress required the cession to the United States of all that part of Texas north of the parallel of thirty-six degrees and thirty minutes of north latitude as a condition precedent before the admission would be agreed to. The question of slavery was also considered in this requirement. Texas was conceded the right to form as many as four states out of her

remaining territory. It was afterward claimed that the agreement for the formation of these four states was made before that portion of Texas north of thirty six degrees thirty minutes was cut off, and that therefore, she was entitled to form but three states out of her remaining territory. This seems to have been the fact, although the two transactions were made about the same time.

The following act was passed by congress September 9, 1850: "That the following propositions shall be, and the same hereby are, offered to the State of Texas, which, when agreed to by that State, in an act passed by the general assembly, shall be binding and obligatory upon the United States and upon the said State of Texas: Provided, The said agreement by the said general assembly shall be given on or before the first day of December, 1850: First. The State of Texas will agree that her boundary on the north shall commence at the point at which the meridian of one hundred degrees west from Greenwich is intersected by the parallel of thirty-six degrees thirty minutes north latitude; thence on the said parallel of thirty-second degree of north latitude to the Rio Bravo del Norte, and thence with the channel of said river to the Gulf of Mexico. Second. The State of Texas cedes to the United States all her claim to territory exterior to the limits and boundaries which she agrees to establish by the first article of this agreement. . . . Third. The United States in consideration of said establishment of boundaries, cession of claim to territory, and relinquishment of claims, will pay to the State of Texas the sum of ten million dollars in a stock bearing five per cent interest and redeemable at the end of fourteen years, the interest payable half yearly at the Treasury of the United States."

The same act (of September 9, 1850) established the boundary of the Territory of New Mexico, as follows: "Beginning at a point on the Colorado river where the boundary line with the Republic of Mexico crosses the same; thence eastwardly with said boundary line to the Rio Grande; thence following the main channel of said river to the parallel of the thirty second degree of north latitude; thence east with said degree to its intersection with the one hundred and third degree of longitude west from Greenwich; thence north with said degree of longitude to the parallel of thirty-eight degrees of north latitude; thence west with said parallel to the summit of the Sierra Madre; thence south with the crest of said mountains to the thirty seventh parallel of north latitude.*

* This strip between the thirty seventh and thirty eighth parallels of latitude and the one hundred and third meridian and the Sierra Madres became known later as "The Strip."

thence west with said parallel to its intersection with the boundary line of the State of California; thence with said boundary line to the place of beginning." This act was suspended in its operation until the boundary between the United States and Texas had been established. It required a proclamation of the president to be put in force. The same act also gave the following boundary to the Territory of Utah: "That all that part of the territory of the United States included within the following limits, to-wit: Bounded on the west by the State of California; on the north by the Territory of Oregon; on the east by the summit of the Rocky mountains, and on the south by the thirty-seventh parallel of north latitude, be, and the same is hereby, created into a temporary Government by the name of the Territory of Utah."

The Territory of Washington was formed March 2, 1853, with the following boundaries: "That from and after the passage of this act, all that portion of Oregon Territory lying and being south of the forty-ninth degree of north latitude and north of the middle of the main channel of the Columbia river, from its mouth to where the forty-sixth degree of north latitude crosses said river near Fort Walawalla; thence with said forty-sixth degree of latitude to the summit of the Rocky mountains, be organized into and constituted a temporary Government by the name of the Territory of Washington." The government reserved the right to manage the Indians and their lands. It was made to embrace the northern part of the present State of Idaho.

By the act of June 5, 1858, congress made provision for the survey of so much of the boundary line "between Texas and the United States," as the expression was then current, as lay east or west of the one hundredth meridian west from Greenwich. This line extended north on that meridian from Red river to the parallel of thirty-six degrees thirty minutes north latitude; thence west along that parallel, in accordance with the special agreement with Texas, to the one hundred and third meridian west from Greenwich; thence south on that meridian to the thirty-second parallel of north latitude; and thence west on that parallel to the Rio Grande. On February 8, 1860, the general assembly of Texas created Greer county with the following boundaries: "Beginning at the confluence of Red river and Prairie Dog river, thence running up Red river passing the mouth of South Fork and following Main or North Red river to its intersection with the twenty-third degree of west longitude from Washington (the same as one hundred degrees west from Greenwich); thence due south across Salt Fork and to Prairie Dog river, and thence following that river to the place of beginning." In this manner

Texas claimed and took possession of a tract of country embracing more than one million of acres, which was in dispute between that state and the United States. It lies between the two upper and main forks of Red river, with the town of Mangum near the center. In 1882 Senator Maxey, of Texas, introduced a bill in congress providing for the appointment of a commission to consider the unsettled boundary question between his state and the government. The bill passed the senate, but a similar bill in the house was reported on adversely, and a joint commission was provided for to locate the true boundary in accordance with the treaty of 1819 between Spain and the United States. The objection to the house bill was that it claimed the territory in dispute as belonging to Texas. It defined the following boundaries between Texas and Indian Territory: "Beginning at the southeast corner of said Indian Territory in the middle of Red river; thence up said river to the junction of the Prairie Dog Town and North Forks of said river; thence up the middle of said North Fork to the one hundredth meridian west from Greenwich (twenty-third west from Washington); thence crossing said North Fork by a line due north to the northeast corner of said State of Texas as now established." The commissioners were unable to settle the true boundary, and the question was determined by suit brought in the supreme court of the United States for that purpose. The court held that the intention of Spain and the United States in the convention of 1819 in regard to the boundary must control, and that Melish's map referred to in the treaty must be considered a part of the agreement. But when the entire instrument (the treaty) was considered as a whole, it was shown to have been the evident intention to have commissioners and surveyors at a later date fix and mark the one hundredth meridian west from Greenwich, and not to be guided and governed by the one hundredth meridian as laid down on Melish's map, which was located many miles to the eastward of the true one hundredth meridian west from Greenwich. It was shown to have been the intention that the astronomical one hundredth meridian and not the Melish one hundredth meridian should be the boundary line. It was also shown that the North Fork relied on by Texas to meet the conditions of the boundary description, was not the main nor the larger fork; that the main branch was Prairie Dog Town river; "that the act of Congress of February 24, 1879, creating the northern judicial district of Texas, was to be construed as placing Greer county in that district for judicial purposes only, and not as ceding to Texas the territory embraced in that county;" and that "the territory east of the one hundredth meridian of

west longitude, west and south of the river now known as the North Fork of Red river, and north of a line following westward, as prescribed by the treaty of 1819 between the United States and Spain, the course and along the south bank, both of Red river and the river now known as Prairie Dog Town Fork, or Salt Fork of Red river until such line meets the one hundredth meridian of west longitude—which territory is sometimes called Greer county—constitutes no part of the territory properly included within or rightfully belonging to Texas at the time of the admission of that State into the Union, and is not within the limits nor under the jurisdiction of that State, but is subject to the exclusive jurisdiction of the United States of America." This settled the long disputed question. In May, 1890, this tract of country was made Greer county, of Oklahoma, with Mangum as the county seat. The case was argued in the supreme court in October, 1895, and decided March 16, 1896.

The act of June 5, 1858, authorized the president to have surveyed and marked the boundary lines between the United States and Texas, and the sum of eighty thousand dollars was appropriated to defray the expense. The line to be surveyed was as follows: "Beginning at the point where the one hundred degree of longitude west from Greenwich crosses Red river, and running thence north to the point where said one hundred degree of longitude intersects the parallel of thirty-six degrees thirty minutes north latitude; and thence west with the said parallel of thirty-six degrees thirty minutes north latitude to the point where it intersects the one hundred and third degree of longitude west from Greenwich; and thence south with the said one hundred and third degree of longitude to the thirty-second parallel of north latitude; and thence west with the said thirty-second degree of north latitude to the Rio Grande." On June 2, 1856, President Pierce issued his proclamation defining the boundary between the United States and Mexico to be as follows: Up the Rio Grande to the parallel of thirty-one degrees forty-seven minutes north latitude; thence due west one hundred miles; thence south to the parallel of thirty-one degrees and twenty minutes north latitude; thence west to the one hundred and eleventh meridian west from Greenwich; thence to the western coast. The act of July 8, 1856, authorized the president to have surveyed the southern boundary of Kansas from the Missouri to the New Mexico lines, and the sum of thirty five thousand four hundred dollars was appropriated for the necessary expenses by the act of August 16, 1856. Under date of February 2, 1848, Mexico ceded California to the United States an acquisition second in importance only to the Louisiana

purchase itself. The State of Texas, having agreed to the conditions imposed by congress before its admission to the Union, was declared by act of December 29, 1845, to be one of the United States of America. The proclamation of the president of December 13, 1850, declared that as Texas by an act of November 25, 1850, had accepted the boundaries defined by the United States in the act of September 9, 1850, such boundary was in full force and effect thereafter. By the act of September 30, 1850, the sum of six hundred dollars was appropriated to defray the expense of running the boundary line between Minnesota and Wisconsin.

The famous fight in congress over the admission of Missouri into the Union, was only less momentous than the rebellion itself which occurred forty years later. But that discussion, which was based upon slavery, has no place in this chapter. It is only necessary to notice the question of limits, and the proceedings leading up to their selection and settlement. On December 22, 1819, a bill was introduced in the senate, granting to the citizens of Maine the right to form a state government. On December 29, Senator Smith, of South Carolina, presented a lengthy memorial (really the second thus presented) from the inhabitants of Missouri Territory praying for admission into the Union. In previous ominous proceedings, it had become manifest to all, that slavery in Missouri, when that territory should apply for admission into the Union, would be opposed by many of the northern senators. It was therefore determined by the senators from the south to make the admission of Maine contingent upon the admission of Missouri with the institution of slavery granted: and accordingly, on January 3, 1820, Senator Barbour, of Virginia, when the Maine bill again came up for consideration, moved a postponement of the bill, and gave notice that later he should introduce the following motion: "That the bill entitled, 'A bill declaring the consent of Congress to the admission of the State of Maine into the Union,' be committed to the committee on the Judiciary, with instructions so to amend it as to authorize the people of Missouri to establish a State Government and to admit such State into the Union upon an equal footing with the original States in all respects whatever." This motion precipitated the discussion which resulted in the "Missouri Compromise."

The boundaries mentioned in the memorial of 1819 were as follows: "Beginning at a point in the middle on the main channel of the Mississippi river at the thirty-sixth degree of north latitude, and running thence in a direct line to the mouth of the Big Black river (a branch of White river); thence up the main

branch of White river in the middle of the main channel thereof to where the parallel of thirty-six degrees and thirty minutes north latitude crosses the same; thence with that parallel of latitude due west to a point from which a due north line will cross the Missouri river at the mouth of Wolf river;* thence due north to a point due west of the mouth of Rock river; thence due east to the middle of the main channel of the river Mississippi opposite the mouth of Rock river, and thence down the river Mississippi in the middle of the main channel thereof to the place of beginning." As will be noticed, the memorial asked for a much larger tract of country than was finally embraced within the state limits. Had the request of the petitioners been granted, they would have received three tiers of counties along the southern boundary of Iowa and a strip more than a county wide along the eastern side of Kansas. During the long discussion which followed, over the admission of Missouri, the limits mentioned in the memorial were considerably cut down. Mr. Burrill, of Rhode Island, in a speech on the bill said that the allegation contained in the memorial that the territory contained a population of one hundred thousand persons was written (in 1818) before the Territory of Arkansas had been set off from Missouri Territory, and he desired to know the actual population within the proposed limits. He said, "And with respect to the boundaries of the new State (Missouri) I am desirous of more definite information. Certain limits are indeed proposed by the committee in their report, but by a certain bill which has been laid on our desks by mistake, it appears that certain other boundaries have been thought of; and I wish to know the cause of the variation in the boundaries. Who was it that marked out the immense district of country proposed to be included in the new State? Who has given these metes and bounds? I do not know, and I question whether even the committee which reported it can inform the Senate. These boundaries are not described and marked out in the document on which the bill was professedly founded. The boundaries proposed in the amendment† before the Senate, I believe, embrace a less extent of territory than those proposed in the memorial, but enough has been said to show that the Senate is without the necessary information to enable them to act understandingly." In referring to the Missouri compromise many years afterward,

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* Wolf river rises in Brown County, Kansas, and flows northeasterly through Doniphan county to the Missouri river.

† The bill before the Senate at this time was one that had been considered in 1818, but had been amended in several important particulars, among which was a decided curtailment of the limits asked for.

Mr. Benton said in the United States senate that the bill had all the weight and sanctity of an amendment to the constitution. There is no doubt that had not both factions—slavery and anti-slavery—yielded a portion of what they wanted at this time, the southern states would have withdrawn from the Union. It was a sacred compromise, rigidly adhered to for the sake of the Union for many years, but was finally repealed by the Kansas-Nebraska bill. By act approved May 26, 1824, congress appropriated the sum of one thousand five hundred dollars to complete the payment for surveying the south boundary of Missouri and its west boundary south of the Missouri river.

The boundaries of the State of Missouri finally agreed upon were as follows: "Beginning in the middle of the Mississippi river on the parallel of thirty-six degrees of north latitude; thence west along that parallel of latitude to the St. Francois river; thence up and following the course of that river in the middle of the main channel thereof to the parallel of latitude of thirty-six degrees thirty minutes; thence west along the same to a point where the said parallel is intersected by a meridian line passing through the middle of the mouth of the Kansas river where the same empties into the Missouri river; thence from the point aforesaid north along the said meridian line to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line to correspond with the Indian boundary line; thence east from the point of intersection last aforesaid along the said parallel of latitude to the middle of the channel of the main fork of the said river Des Moines; thence down and along the middle of the main channel of the said river Des Moines to the mouth of the same where it empties into the Mississippi river; thence due east to the middle of the main channel of the Mississippi river; thence down and following the course of the Mississippi river in the middle of the main channel thereof to the place of beginning." The admission of the state was conditioned upon the ratification of these boundaries. The act further provided that slavery, except in the State of Missouri, should be forever prohibited in all territory north of the parallel of thirty-six degrees thirty minutes north latitude in territory that had been ceded to the United States by France.

Soon after Missouri was admitted into the Union, the project of attaching what afterward became known as the "Platte Purchase" to that state was persistently urged by the citizens. But it was many years before the Indian title could be extinguished, and, in the meantime, congress, having been petitioned to that effect several times, passed the following enactment June 7, 1836:

"Be it enacted, etc., That when the Indian title to all the lands lying between the State of Missouri and the Missouri river shall be extinguished, the jurisdiction over said land shall be hereby ceded to the State of Missouri, and the western boundary of said State shall be then extended to the Missouri river, reserving to the United States the original right of soil in said lands and of disposing of the same: Provided, That this act shall not take effect until the President shall by proclamation declare that the Indian title to said lands has been extinguished; nor shall it take effect until the State of Missouri shall have assented to the provisions of this act."

Provision was made for the survey of the boundary line between Missouri and Iowa Territory by the congressional act of June 17, 1844. It was stipulated that each should appoint a commissioner, and they too should select a third, who must not be a resident of either state or territory. The line which they should mark out and establish must be conclusive, but it was further conditioned that the act should not go into effect until Missouri should have assented to the same.

By treaty with the Osage Indians in 1808, the United States secured the greater part of what is now the State of Missouri north of the Missouri river. But the War of 1812 delayed the survey of this tract. In 1815 the treaty was renewed and confirmed, and John C. Sullivan was sent to survey, define and mark the boundaries of the purchase. He started in the middle of the Missouri river at the mouth of the Kansas river and ran due north one hundred miles. There he planted a post. He then ran an east line to the Des Moines river [illegible] east as he thought, but through some mistake, a little north of east, thus throwing the eastern extremity of the line too far to the north. When the people of Missouri applied first in 1818 for admission into the Union, they spoke for the following boundaries: "The boundaries which they solicit for the future State, they believe to be the most reasonable and proper that can be devised. The southern limits will be an extension of the line that divides Virginia and North Carolina, Tennessee and Kentucky. The northern will correspond nearly with the north limits of the Territory of Illinois, and with the Indian boundary line near the mouth of the river Des Moines. A front of three and a half degrees upon the Mississippi will be left to the south, to form the Territory of Arkansas, with the river Arkansas traversing its center. A front of three and a half degrees more, upon a medium depth of two hundred miles, with the Missouri river in the center, will form the State of Missouri. Another front of equal extent, embracing

the great river St. Pierre, will remain above to form another state at some future day. The boundaries as solicited will include all the country to the north and west to which the Indian title has been extinguished. They will include the body of the population." As will be observed, they mentioned for their northern boundary a line corresponding with "the Indian boundary line near the mouth of the river Des Moines," evidently meaning the line run by Mr. Sullivan. Before the Territory of Iowa was formed, or as early as 1837, the contest over the northern boundary of Missouri originated between the government of the United States and the State of Missouri. As early as 1831, Missouri had petitioned (as shown above) for the tract of country which became known as the "Platte Purchase." As soon as the Indian title thereto was extinguished, the president by proclamation March 28, 1837, declared that tract to be a part of the State of Missouri.

When Iowa was admitted into the Union in 1846, she began immediately to make her surveys based upon the northern boundary of Missouri, which was the southern boundary of Iowa. Immediately, Iowa and Missouri came in conflict. When the latter had been admitted in 1821, her northern boundary was spoken of as passing "through the rapids of the river Des Moines, making the same line to correspond with the Indian boundary line." It was over this description that the difficulty arose, or rather continued, because the same dispute had originated between the government and the State of Missouri, and Iowa merely stepped into the shoes of the government so far as this contention was concerned. Missouri maintained that the rapids spoken of were in the Des Moines river at the Big Bend, and therefore that her northern boundary should be about ten miles farther to the north than the Sullivan line. Iowa maintained that the Sullivan line was the correct one, if it had been run correctly by Mr. Sullivan. She asked to have that correction made; that is, while the northwestern point of the line as run by Mr. Sullivan should remain the same, the line should be about two miles farther to the south at its eastern extremity than the Sullivan line, thus giving to Iowa a triangular strip two miles wide at the eastern end and tapering to a point at the northwestern corner of Missouri. As Iowa and Missouri were unable to settle the dispute, they agreed to refer it, as previously stated, to the supreme court of the United States; whereupon Missouri filed her bill against Iowa, claiming a strip about ten miles wide along the northern border, and Iowa filed a cross bill claiming the triangular strip afore-mentioned. In the examination of witnesses, they

were about equally divided as to what were "the rapids of the river Des Moines." Several maintained that the rapids meant were in the Mississippi near, and just above, the mouth of the river Des Moines. Others declared that there were several rapids in the river Des Moines which answered the description. However, the result showed that there were no rapids strictly so called in the Des Moines proper, but only several small ripples which could not have been meant. As the contention of Missouri was based almost wholly on this point, her claims thus fell to the ground. It was shown that more than fifteen Indian treaties previously made had referred to the Sullivan line as the correct boundary of Missouri on the north, and that in none had that state objected to them on that score. In the formation of her own land districts she had recognized that line as her northern boundary. It was shown, also, that when the Territory of Iowa was formed in 1838, the Sullivan line had been laid down as her southern boundary without protest from either Iowa or Missouri. Again, when the State of Iowa was erected, that line had been set down as her southern boundary, again without protest from either Iowa or Missouri. During the territorial government of Iowa, a period of nearly ten years, counties had been laid off with that line as a base. In 1836, Missouri had ordered a survey made of her northern boundary, and a line called "Brown line" about ten miles north of the Sullivan line had been run, and during the territorial period of Iowa this strip was in dispute. The Brown line ran to the rapids in the river Des Moines at the big bend. The final decree of the supreme court was to the effect that as the contention of Missouri was based upon the term "rapids of the Des Moines river," and as there were no such rapids properly speaking, her claim to the Brown line could not be maintained; and that as both the United States government and the Territory of Iowa had recognized the Sullivan line from 1820 to 1846 in numerous treaties and otherwise, the latter was estopped from claiming the triangular strip to the southward of the Sullivan line. The latter line was, therefore, confirmed and ordered re-surveyed; particularly was it ordered to relocate and re-mark the northwestern corner, from which the commissioners were also to run a line due west to the Missouri river to fix the northern boundary of the Platte purchase. Joseph C. Brown and Henry B. Hendershot were appointed commissioners on behalf of Missouri and Iowa respectively, but the former dying, Robert W. Wells was appointed in his place. This ended the controversy. In the supreme court, the case was entitled "Missouri v. Iowa," and may be found in 7 Howard, 660. The resurvey of

the Sullivan line and the survey of the line from the northwest corner of Missouri, as established by Mr. Sullivan, to the Missouri river, cost the sum of eleven thousand and forty two dollars and sixty-eight cents.

At the time Missouri was admitted to the Union, the future as to railroads was, of course, unknown. It was thought that the prosperity of commerce in the "sovereign states" west of the Mississippi would have to depend upon the rivers traversing them. Thus in the memorial of the people of Missouri, Arkansas was to be traversed by the river Arkansas, Missouri by the Missouri, and one state north of the latter by the river St. Pierre. But congress did not wholly agree to this division, and accordingly placed the northern boundary of Missouri far enough south to provide for the formation of two states above the latter; Iowa traversed by the Des Moines river, and Minnesota by the St. Peter's and the upper Mississippi rivers. Thus the prime consideration in the formation of these states was the advantages afforded by the Mississippi on the east and the large river that should traverse each. After the formation of the State of Missouri, all the country west of the Mississippi river and north of that state continued to be called Missouri Territory until 1834, when it was attached to Michigan Territory. There seems to have been no formal act of congress applying the name "Missouri Territory" to this tract of country during that period. It simply was referred to as such. The western boundaries were indefinite, but the northern line was the demarcation between the United States and Canada.

By act approved June 28, 1834, all that tract of country bounded on the east by the Mississippi river, south by Missouri, and by a line drawn due west from the northwest corner of Missouri, southwest and west by the Missouri river and White Earth river, and on the north by the northern boundary of the United States, was *attached* for executive purposes to Michigan Territory. On this tract of territory it was estimated that at the time there were from five thousand to eight thousand people. It embraced all of Iowa and part of North Dakota, South Dakota and Minnesota. All this tract was practically without government, having been previously left to shift for itself. It is said that in this tract as late as 1820 might have been seen a justice of the peace holding a commission signed by the sovereign of France or Spain.

By act approved April 20, 1836, congress provided for the formation of Wisconsin Territory: "That from and after the third day of July next the country included within the following boundaries *shall constitute* a separate territory, for the purposes

of temporary government, by the name of Wisconsin, that is to say: Bounded on the east by a line drawn from the northeast corner of the State of Illinois through the middle of Lake Michigan to a point in the middle of said lake and opposite the main channel of Green Bay, and through said channel and Green Bay to the mouth of the Menomonee river; thence through the middle of the main channel of said river to that head of said river nearest to the Lake of the Desert; thence in a direct line to the middle of said lake; thence through the middle of the main channel of the Montreal river to its mouth; thence with a direct line across Lake Superior to where the territorial line of the United States last touches said lake northwest; thence on the north with the said territorial line of the White Earth river;* on the west by a line from the said boundary line following down the middle of the main channel of White Earth river to the Missouri river, and down the middle of the main channel of the Missouri river to a point due west from the northwest corner of the State of Missouri; and on the south from said point due east to the northwest corner of the State of Missouri; and thence with the boundaries of the States of Missouri and Illinois as already fixed by acts of Congress. And after the third day of June next all power and authority of the Government of Michigan in and over the territory hereby constituted shall cease." From the above it will be seen that the large tract of country to the west of the Mississippi was not *attached* to the Territory of Wisconsin, but was made a part of it. In the act of July 2, 1836, the following language was used: "That the tracts of land in the Territory of Wisconsin, including the towns of Fort Madison and Burlington in the county of Des Moines; Belleview, Du Buque and Peru in the county of Du Buque; and Mineral Point in the county of Iowa shall be laid off into town lots, streets, avenues, public squares, outlots," etc. Here the language shows that the towns named were *in* the Territory of Wisconsin, not *attached* to it. The act of June 28, 1834, did not make this section of country a part of the Territory of Michigan, it merely *attached* it to that territory for executive purposes. The act of June 12, 1838, stipulated "that for the sale of the public lands *in* that part of the territory of Wisconsin situated west of the river Mississippi, two land districts are hereby created," the Des Moines, with land office at Burlington; and the DuBuque, with land office at DuBuque. Thus the whole of Iowa, and parts of Minnesota, North Dakota, and South Dakota constituted a part of the

* This river is in the northern part of North Dakota.

Territory of Wisconsin, and were not merely attached to it for purposes of government.

Under date of June 12, 1838, congress divided the Territory of Wisconsin, and set off therefrom the Territory of Iowa. The following were the proceedings: "That from and after the third day of July next all that part of the present Territory of Wisconsin which lies west of the Mississippi river and west of a line drawn due north from the headwaters or sources of the Mississippi to the Territorial line, shall, for the purposes of temporary government, be and constitute a separate territorial government by the name of Iowa." Six days later, congress authorized the president to have surveyed the southern boundary line of Iowa under the following section: "That the said boundary line shall be run or surveyed, ascertained and marked in all respects according to, and in pursuance of, the provisions of the following acts, wherein the said boundary line is defined and described, to-wit: An act of Congress of March 6, 1820, entitled, 'An act to authorize the people of Missouri Territory to form a constitution and State Government,' etc.; and an act of June 7, 1836, entitled, 'An act to extend the western boundary of the State of Missouri to the Missouri river.'" Under this act, three commissioners were to be appointed, one each by the United States, the State of Missouri, and the Territory of Iowa. In case but one or neither of the others should appoint the necessary commissioner, the one appointed by the president was to proceed alone to survey the line. Iowa Territory, as thus constituted, embraced all of the present Iowa, all of Minnesota west of the Mississippi and all of the Dakotas east of the White Earth and the Missouri rivers.

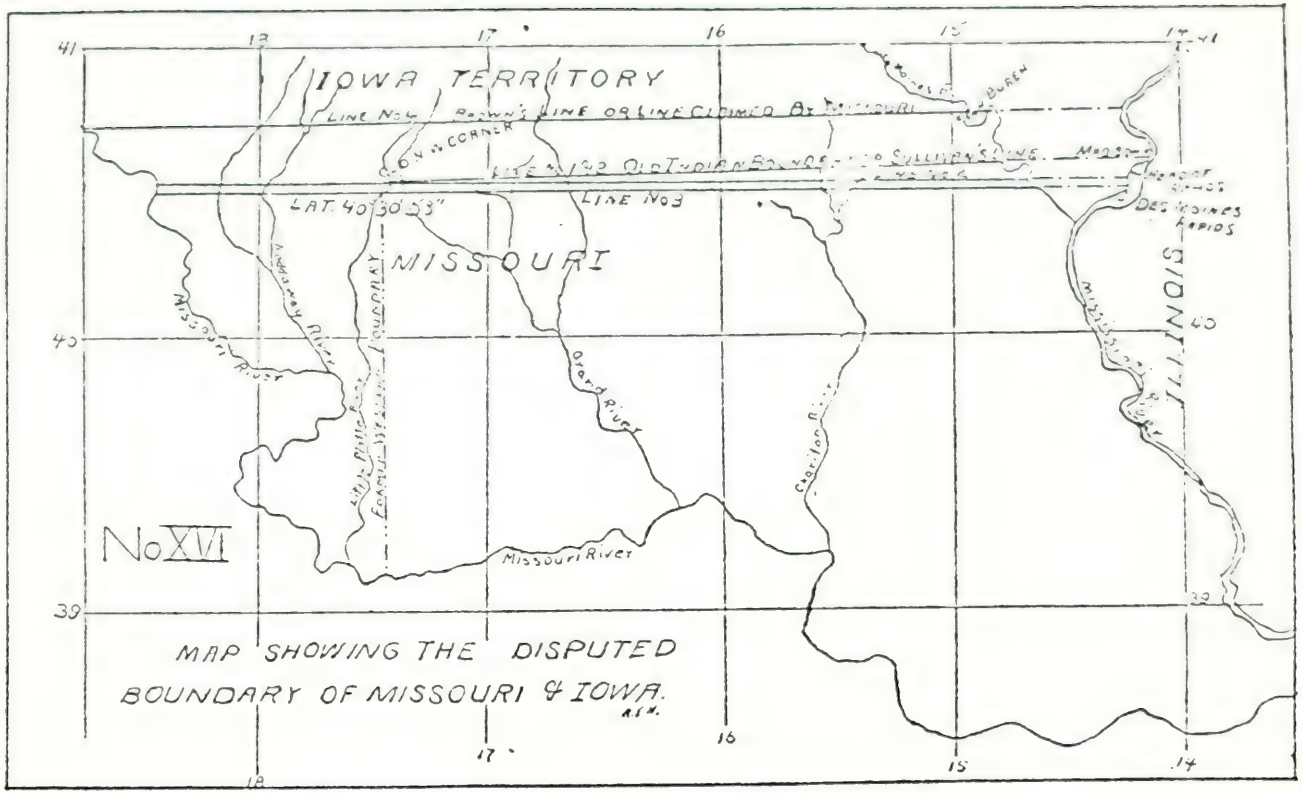
Congress provided under date of March 3, 1839, "That the middle or center of the main channel of the river Mississippi shall be deemed and is hereby declared to be the eastern boundary line of the Territory of Iowa, so far or to such extent as the said Territory is bounded eastwardly by or upon said river; Provided, however, That the said Territory of Iowa shall have concurrent jurisdiction upon the said Mississippi river with any other conterminous State or Territory so far or to such extent as the said river shall form a common boundary between the aforesaid Territory of Iowa and any other such conterminous State or Territory."

On February 12, 1840, a memorial from the inhabitants of the Territory of Florida was presented in congress praying for admission into the Union. In the debate on the bill, Mr. Sevier, of Arkansas, said "he would tell Senators openly and aboveboard

when the question of admission came up, he would not vote for the admission of any free State, without admitting at the same time a slave State. When Iowa came in, East Florida must come in; and when Wisconsin came in, another slave State must come in. This was the course pursued in the case of Michigan and Arkansas, and this was the course that would be pursued in future. It was the only course which would preserve the balance of power and protect the interests of the slave States on this floor, which was their last refuge. He had no concealment on the subject and disdained to be beating about the bush."

The rule of congress to admit a northern and a southern state at the same time was followed when Iowa was permitted to enter the Union. Iowa and Florida were admitted by the act of March 3, 1845. The boundary of the former was fixed as follows: "Beginning at the mouth of the Des Moines river, in the middle of the Mississippi, thence by the middle of the channel of that river to a parallel of latitude passing through the mouth of the Mankato or Blue Earth river; thence west along the said parallel of latitude to a point where it is intersected by a meridian line seventeen degrees and thirty minutes west of the meridian of Washington City, thence due south to the northern boundary line of the State of Missouri; thence eastwardly following that boundary to the point at which the same intersects the Des Moines river; thence by the middle of the channel of that river to the place of beginning." These limits gave to the Territory two tiers of counties along the southern boundary of the present Minnesota to the parallel of [illegible] degrees thirty minutes west longitude, but cut off much of the western part of the present Iowa, the western boundary of Iowa Territory being a line north and south across the state not far from the cities of Jefferson and Greenfield. Under the act of 1845, the boundaries of the proposed state were so restricted by congrss, that the inhabitants voted a majority against admission. They demanded a westward extension to the Missouri river, which was granted to them the following year.

Congress provided under date of August 4, 1846, "that the following shall be, and they are hereby declared to be, the boundaries of the State of Iowa, in lieu of those prescribed by the second section of the act of the third of March, 1845, entitled, 'An act for the admission of the States of Iowa and Florida into the Union,' viz: Beginning in the middle of the main channel of the Mississippi river, at a point due east of the middle of the mouth of the main channel of the Des Moines river, thence up the middle of the main channel of the said Des Moines river



MAP SHOWING THE DISPUTED BOUNDARY OF MISSOURI & IOWA.

to a point on said river where the northern boundary line of the State of Missouri as established by the Constitution of that State, adopted June 12, 1820, crosses the said middle of the main channel of the said Des Moines river; thence westwardly along the said northern boundary line of the State of Missouri, as established at the time aforesaid, until an extension of said line intersect the middle of the main channel of the Missouri river; thence up the middle of the main channel of the said Missouri river to a point opposite the middle of the main channel of the Big Sioux river according to Nicollet's map, thence up the main channel of the said Big Sioux river according to said map until it is intersected by the parallel of forty-three degrees thirty minutes north latitude; thence east along said parallel of forty-three degrees thirty minutes until said parallel intersect the middle of the main channel of the Mississippi river; thence down the middle of the main channel of said Mississippi river to the place of beginning."

"Section II. That the question which has heretofore been the subject matter of controversy and dispute between the State of Missouri and the Territory of Iowa, respecting the precise location of the northern boundary line of the State of Missouri, shall be, and the same is hereby, referred to the Supreme Court of the United States for adjudication and settlement, in accordance with the act of the Legislature of Missouri approved March 25, 1845, and the memorial of the Council and House of Representatives of the Territory of the Iowa, approved January 17, 1846, by which both parties have agreed to 'the commencement and speedy determination of such suit as may be necessary to procure a final decision of the Supreme Court of the United States upon the true location of the northern boundary of that State;' and the said supreme court is hereby invested with all the power and authority necessary to the performance of the duty imposed by this section."

In December, 1855, Senator Jones, of Iowa, introduced a bill in the United States senate authorizing an extension of the western boundary of Iowa to the Missouri river. In August, 1856, a bill of similar import was introduced in the house. Had either of these bills become a law, what is now the southern part of South Dakota, would have been attached to Iowa; but neither became a law. The attempt was repeated in 1858, when Mr. Curtis introduced a bill in the house having the same import. These bills appear to have met their fate in the voiceless tomb of the committee rooms.

Provision for the survey of the boundary line between the state of Michigan and the Territory of Wisconsin was made by congress under date of July 12, 1838. The act of August 12, 1848, appropriated a sum not to exceed fifty thousand dollars for the survey of the boundary line between the United States and Mexico. The act of August 14, 1848, made all of the territory of the United States west of the Rocky mountains and north of the forty-second parallel of north latitude, the Territory of Oregon. The act of March 3, 1849, authorized the surveyor general of Wisconsin and Iowa, under the direction of the commissioner of the general land office, to cause the northern boundary line of the state of Iowa to be run and marked. The act of September 30, 1850, appropriated the sum of fifteen thousand dollars to defray this expense.

In the United States senate, on December 4, 1848, two bills were introduced: One for the formation of the Territory of Minnesota, and one for the formation of the Territory of Nebraska. Strong objection was shown by the southern senators to the boundaries defined in the bill for the formation of the Territory of Minnesota. Mr. Butler, of South Carolina, said: "There will be embraced in the Territory of Minnesota about twenty thousand square miles of land that was covered by the ordinance of 1787 and formed a part of what was commonly called the Northwest Territory, out of which five States were to be created. The separation of this tract and the formation of an additional State is, to my apprehension, not only a violation of good faith, but a violation of the positive provisions of that ordinance." Mr. King, of Alabama, said: "I think the remarks of my honorable friend from South Carolina in regard to having yielded so large a portion of the territory originally belonging to that section of the country from which five States were to be made, and five only, for the purpose of forming a new and additional State, is an evidence of the liberality of that section of the country in which I live." Mr. Dodge, of Iowa, said: "As to this matter of boundary, I will state that Wisconsin would have gladly retained all that portion of the territory embraced in the ordinance of 1787 which was at first assigned to her. That portion of her territory was not set off because it was the choice of her people, but because the Congress of the United States dismembered her territory and curtailed her limits." The southern senators argued that as the ordinance of 1787 had provided for the formation of five States only, out of the Northwest Territory, and as five had already been formed, to wit: Ohio, Indiana, Michigan, Illinois and Wisconsin, it was unfair

to the South for the North to use still another large tract of that territory as a basis for the formation of another free state. However, notwithstanding the objection, the bill was permitted to pass the senate on March 3, 1849. This was the senate bill with the house amendments.

The Territory of Minnesota was formed pursuant to act of congress of March 3, 1849, the boundaries being as follows: "That from and after the passage of this act, all that part of the territory of the United States which lies within the following limits, to-wit: Beginning in the Mississippi river at the point where the line of forty-three degrees and thirty minutes of north latitude crosses the same; thence running due west on said line, which is the northern boundary of the State of Iowa, to the northwest corner of the said State of Iowa; thence southerly along the western boundary of said State to the point where said boundary strikes the Missouri river; thence up the middle of the main channel of the Missouri river to the mouth of the White Earth river; thence up the middle of the main channel of the White Earth river to the boundary line between the possessions of the United States and Great Britain; thense east and south of east along the boundary line between the possessions of the United States and Great Britain to Lake Superior; thence in a straight line to the northernmost point of the State of Wisconsin in Lake Superior; thence along the western boundary line of said State of Wisconsin to the Mississippi river; thence down the main channel of said river to the place of beginning; be, and the same is, hereby erected into a territorial government by the name of the Territory of Minnesota: Provided, that nothing in this act contained shall be construed to inhibit the Government of the United States from dividing said Territory into two or more territories in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said Territory to any other State or Territory of the United States." The tract of country embraced in the Territory of Minnesota comprised all of the present Minnesota and all of the Dakotas east of the White Earth and the Missouri rivers. The eastern boundary of Minnesota Territory had been established when the state of Wisconsin was created. It was part of the western boundary of the latter, and was the same as the present boundary. It was so well defined that mention of it was omitted from the act creating Minnesota Territory.

On December 24, 1849, Mr. Rice, delegate from the Territory of Minnesota, introduced a bill in the house providing for the admission of that territory into the Union as a state. The com-

mittee on territories, of which Mr. Grow, of Pennsylvania, was chairman, reported a substitute bill which gave the proposed state the following boundaries: "Beginning at the point in the main channel of the Red River of the North where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux river; thence (up) the main channel of said river to Lake Travers; thence up the center of the lake to the southern extremity thereof; thence in a direct line to the head of the Big Stone Lake; thence through its center to its outlet; thence by a due south line to the north line of the State of Iowa; thence east along the northern boundary of said State to the main channel of the Mississippi river; thence up the main channel of said river and following the boundary line of the State of Wisconsin until the same intersects the St. Louis river; thence down said river to and through Lake Superior on the boundary line of Wisconsin and Michigan until it intersects the dividing line between the United States and the British possessions; thence up Pigeon river and following said dividing line to the place of beginning." Mr. Grow said: "A portion of the Territory of Minnesota is divided by this bill, north and south by Red river, the whole length of that river, thence following the Big Stone Lake to its outlet—the head of the Big Stone Lake and Lake Travers being connected by water—thence by a line due south to the boundary line of Iowa. All the territory east of that line is to be formed into a State, making seventy thousand square miles, and leaving west of the boundaries given in the Territory of Minnesota about ninety thousand square miles, which, if the people of Minnesota shall adopt a State constitution, will be left to be organized under the name of Dakotah, as a proper name of Indian derivation. The general provisions of the bill (the substitute) are the same as those contained in the bill of the old form."

These changes in the proposed boundaries of the new state were immediately challenged by several members from the south. One of them read to Mr. Grow the following extract from the Ordinance of 1787: "That there shall be formed in said Territory not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to-wit: The western State in the said Territory shall be bounded by the Mississippi, the Ohio and the Wabash rivers; a direct line drawn from the Wabash and Post Vincennes due north to the territorial line between the United

States and Canada; and by the said territorial line to the Lake of the Woods," etc., describing two other states (Ohio and Indiana): "Provided, however, and it is further understood and declared that the boundaries of these three States shall be subject so far to be altered that if Congress shall hereafter find it expedient they shall have authority to form one or two States in that part of the said Territory which lies north of an east and west line drawn through the southerly bend or extremity of Lake Michigan." Mr. Phelps, of Missouri, said: "These five States, the entire number authorized by the Ordinance of 1787, are already organized; and now the gentleman, or the Committee on Territories, propose to embrace within the limits of another State, a portion of territory which it was stipulated by those who framed that ordinance, should be embraced in one of these five States." Mr. Grow replied: "What does the gentleman from Missouri propose to do with that part of the Territory which is left outside of the limits of the proposed State? Would he let it stand forever in an unorganized condition? Is that what the gentleman proposes? Or should it be organized into a separate State, so as to make six States out of the North West Territory? Will the gentleman trample down his own proposition? Five States have been formed out of the North West Territory, as required by the Ordinance of 1787, and no one proposes to make any more, but only to take a gore of land left outside of all the organized States and incorporate it with other territory never under the Ordinance of 1787, which of itself would make a large State. How, then, is the Ordinance of 1787 violated? It comes with a bad grace from a [illegible] from the State of Missouri to raise such a question here to-day, when the Platte country was taken from the Ordinance of 1820 and included within the limits of that State. It comes with a bad grace from a gentleman coming from a State which has trampled upon the sacredness of compacts to come here and complain that we take from under the Ordinance of 1787 a little strip of territory which was left outside the limits of all organized States. And now, because it is to be included within an organized State, it is, forsooth, a great breach of compact." There immediately succeeded a sharp running debate, in which all features of the bill were discussed. A motion to lay the bill on the table was rejected. The Rice bill had fixed the boundaries as follows: From the British line up the Red River of the North to Lake Travers thence through the center of the same to its southern extremity, thence to the junction of Kampeskee Lake with the Big Sioux river, thence down the main

channel of that stream to the northwest corner of Iowa. The opposition in the house was not persistent, and the bill finally passed by the vote of 97 yeas and 75 nays.

When the bill came up in the senate, Mr. Jones, of Iowa, offered the following amendment: "Provided, That the convention to form the constitution for said State shall submit to the people whether the foregoing boundaries shall be adopted, or whether the State shall embrace all that portion of the present Territory which lies south of the forty-sixth degree of north latitude." Continuing, he said, "I am informed that the Legislature of Minnesota by a vote of 24 or 25 to 10 or 11 in the assembly, and in the Council by a vote of 11 to 4, have petitioned Congress not to adopt a north and south boundary. I believe that the boundary proposed by me would best accommodate the great mass of the people, but I shall vote for the bill whether my amendment be adopted or not. I think is due to the people of the Territory that their Legislature should be consulted on this subject. It is a subject on which they have desired to be heard; and I therefore offer the amendment as requested by citizens of the Territory. The amendment will divide the Territory about equally into two parts. It consists of one hundred and seventy-one thousand square miles. The line which I propose, the forty-sixth degree of north latitude, will divide it about equally into two parts."

Mr. Thompson said: "The part thus cut off is to constitute the suggested future State of Superior." Mr. Butler, of South Carolina, said: "To allow any people to say what land they will take, is really a thing which I cannot consent to permit. I would not allow one of my sons to take all my land on his mere saying that he wanted it. (Laughter.) I think that is an extravagant proposition beyond anything I know of. Besides, by the celebrated Ordinance of 1787, so much insisted on, the North West Territory was to be divided into five States. Now you are going to make seven or eight, according to the mode in which this division is to be made." Mr. Douglas of Illinois said: "The Senator from South Carolina, having delivered my speech, I have not a word to say." Mr. Jones of Iowa answered: "According to the boundaries now prescribed by the bill before us, the delegate from the Territory the other day admitted that the new State would embrace about ninety thousand square miles. I restrict them by my amendment to one half of one hundred and seventy-one thousand. I desire that the people of the future State shall have the right to say, not how much land they will have, or how they will have it, but whether they shall be

divided by an east and west, or a north and south line, and not to give them one inch more or less according to their wishes." Mr. Butler replied: "I see very distinctly what it is. Instead of providing for one child, the Senator from Iowa wishes to provide for two." Mr. Douglas said: "I can never yield the position that Congress must reserve to itself the right to prescribe the boundaries of new States." Mr. Jones replied: "You are doing it in this bill." Mr. Douglas: "No, sir." The Jones amendment was rejected. The final vote in the senate on the bill was 47 yeas and 1 nay, the latter being Mr. Thompson of Kentucky.

The people of Minnesota were authorized to form a constitution and a state government by act of congress approved February 26, 1857, the following being the boundaries seted upon: "Beginning at the point in the center of the main channel of the Red River of the North where the boundary line between the United States and the British possessions crosses the same; thence up the main channel of said river to that of the Bois des Sioux river; thence (up) the main channel of said river to Lake Travers; thence up the center of said lake to the southern extremity thereof; thence in a direct line to the head of Big Stone Lake; thence through its center to its outlet; thence by a due south line to the north line of the State of Iowa; thence east along the northern boundary of the said State to the main channel of the Mississippi river; thence up the main channel of said river and following the boundary line of the State of Wisconsin until the same intersects the St. Louis river; thence down said river to and through Lake Superior on the boundary line of Wisconsin and Michigan, until it intersects the dividing line between the United States and the British possessions; thence up Pigeon river and following said dividing line to the place of beginning." The state of Minnesota was formally admitted to the Union by act approved May 11, 1858.

The bill for the formation of Nebraska Territory, introduced in the United States senate December 4, 1848, was pioneer work, and nothing of importance resulted. Another bill for the formation of this Territory was presented in the house during the session of 1852-3, and after passing through the usual order was voted upon February 10, with 98 yeas and 43 nays. It went to the senate, and a motion by Senator Douglas to take it from the table for consideration was lost, 20 yeas, 25 nays. The following day he made another motion to the same effect, but with the same result. The boundaries set forth in this bill embraced all of the immense tract of country west of Missouri, Iowa and Minnesota, north of the Indian Territory to the British posses-

sions, and westward to the Rocky mountains. In fact, it embraced a strip one-half of a degree wide along the northern border of Indian Territory, Oklahoma and New Mexico as far as the mountains. In the bill were provisions for the subdivision of this large tract of territory at a later date. The principal argument in support of the bill was that, as settlers were locating in that territory and needed protection, and as such settlements were of great importance along the overland routes to the Pacific coast, they should be given the protection afforded by a territorial form of government. Up to this time nothing had been said concerning such a territory as Kansas.

On the 5th of December, 1853, Senator Dodge, of Iowa, gave notice in the senate that later he should introduce a bill "to organize a territorial government for the Territory of Nebraska." The boundaries of the proposed Territory were to be "included between the summit of the Rocky mountains on the west, the States of Missouri and Iowa on the east, the parallel of forty-three degrees thirty minutes north latitude on the north, and the Territory of New Mexico and the parallel of thirty-six degrees thirty minutes north latitude on the south." The committee on Territories returned the bill with a substitute defining the boundaries as follows: "Beginning at the southwest corner of the State of Missouri; thence running west on the line of thirty-six degrees thirty minutes north latitude until it intersects the one hundred and third meridian of longitude west from Greenwich; thence north on that meridian until it intersects the thirty-eighth parallel of north latitude; thence west on the said parallel of latitude to the summit of the Rocky mountains, thence northward along and upon the summit of said range of mountains to the (forty-ninth parallel of latitude; thence eastward to the)* western boundary of the Territory of Minnesota (White Earth river); thence southward on and with said boundary to the Missouri river; thence down the center of the main channel of said river to the State of Missouri; thence south on and with the western boundary of said State to the place of beginning." These boundaries not proving satisfactory to the committee, the following were finally placed in the bill: "That all that part of the territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to wit: Beginning at a point in the Missouri river where the fortieth parallel of north

* The matter in parenthesis seems to have been omitted from the congressional description.

latitude crosses the same; thence west on said parallel to the summit of the highlands separating the waters flowing into the Green river or Colorado of the West from the waters flowing into the Great Basin; thence northward on the said highlands to the summit of the Rocky mountains; thence on said summit northward to the (forty-ninth parallel of north latitude; thence east on said parallel to the)* western boundary of the Territory of Minnesota; thence southward on said boundary to the Missouri river; thence down the main channel of said river to the place of beginning, be, and the same is hereby created into a temporary government by the name of the Territory of Nebraska." In the same substitute the following provision was made: "All that part of the Territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to-wit: Beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the summit of the highlands dividing the waters flowing into the Colorado of the West, or Green river, from the waters flowing into the Great Basin; thence northward on said summit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Kansas."

It will be observed at this juncture that this was the first time Kansas began to figure in the history of the country. It should also be borne in mind that this date witnessed the first plans for making all the country west of Missouri and Iowa slave territory, should the inhabitants so decide. The plan to form two territories instead of one out of that vast tract and to leave the question of slavery to the inhabitants themselves, was the direct outgrowth in the committee rooms of congress of the numerous petitions which had recently been received by that body. The pro-slavery partisans decided to make an effort to nationalize that institution, and in their deliberations hit upon the plausible scheme to leave the question of slavery to the people themselves. It will be seen that Kansas Territory was not made to include the strip along the northern border of what is now

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* Omitted from the congressional description.

Indian and Oklahoma Territories, the evident intention being to leave the Indian lands undivided. If the question of slavery was to be left to the inhabitants throughout all the western country, it did not matter, it was realized, whether the parallel of thirty-six degrees thirty minutes was observed or not. So the Territories of Kansas and Nebraska were pushed northward half a degree, leaving abundant room south of Kansas and north of Texas for the aborigines. The plans of the pro-slavery leaders in congress were fathomed by the anti-slavery wing, and immediately every step was hotly contested. These reasons for the change were given, as shown by the following extract:

"On January 23, 1854, Mr. Douglas, of Illinois, in the United States senate, stated that the attention of the Committee on Territories had been called by the chairman of the Committee on Indian Affairs to the fact that the line thirty-six degrees thirty minutes north latitude would divide the Cherokee country; whereas, by taking the parallel of thirty-seven degrees of north latitude as the southern boundary of Kansas the line would run between the Cherokees and the Osages; and that the Committee had, therefore, concluded to vary the southern boundary so as not to divide the Cherokee nation, by the terms of the bill."*

Mr. English, of Indiana, afterward candidate for vice president of the United States on the ticket with General Hancock, combatted the previously proposed boundaries of Kansas Territory. He said: "In the first place, I object to the boundaries proposed. The country to be organized into territories, as gentlemen are aware, lies, in the main, adjacent to and west of the States of Missouri and Iowa, and extends westwardly to the Territories of Utah, Oregon and perhaps Washington. Now, what are the natural boundaries of these proposed Territories? I design speaking more particularly to the Territory of Kansas, which is the lower and more southern of the two Territories, and the one in which slavery will exist, if it exists in either. Now, of course, all will say that the eastern boundary of the proposed Territory of Kansas should be the present boundary of the State of Missouri; and I think it is equally clear that the western boundary of the proposed Territory of Kansas should be the present boundary of Utah Territory. And I think that this will appear in a much stronger light when we come to consider the nature of the existing boundary of Utah. Sir, what is it? We find it established by law. We find that it is the crest or summit of the Rocky mountains; a boundary, sir, which no man can mis-

* Senate Reports, First Session, Fifteenth Congress.

take; a boundary erected by the hand of the Almighty, that all men can understand it. I say, sir, that this is the natural boundary which should be assigned to that Territory, and I think that this House will be surprised to know that it is not the boundary proposed by the bill now under consideration. The framers of this bill propose extending the Territory of Kansas not only from the State of Missouri westward to the Rocky mountains—a distance of perhaps eight hundred miles—a distance equal to the width of the great States of Ohio, Indiana and Illinois—not only to take it to the summit of the Rocky mountains—but to take it beyond and run it down to the region of the Great Salt Lake, so as to include about one third of the Territory of Utah. To that I am opposed. . . . I think that gentlemen will be satisfied, when they have examined the map, that the plan proposed of incorporating the territory west of the Rocky mountains and east of the Rocky mountains in the same territory is injudicious. There is no community of interest between the people on each side, and but little intercourse, nor can there be. They have but little intercourse with each other, and ought not to be placed in the same territory. I have no particular love for the Mormons, nor for their peculiar institutions; and I know that there is much prejudice existing against that people, and perhaps justly so, in parts of Illinois and Missouri. Yet I am not willing to carry these prejudices to the extent of extending the boundary of this new territory, already too large, so as to include a large portion of Utah."

In answering Mr. English, Mr. Richardson, of Illinois, chairman of the committee reporting the bill, said: "[illegible] sons so manifest and so potent in favor of the boundaries which the committee have determined upon, that no man here can resist them when stated. . . . One reason why this boundary is extended to another territory placed inside of it is this, that every man residing in that portion of the territory taken from the Territory of Utah, comes here and asks this Government to take them from under the power under which they are now placed. Bridger, who has lived here thirty years, emigrated to that Territory in 1823, established trading posts in the mountains, built up in the waste and howling wilderness a home for himself and family, was finally driven from the possession of that property by the hands of the power of that Government, and is now here in this city. For one, I desire to yield to the application made by this man and those placed in similar circumstances, when they ask to be placed under a different government. . . . The lawless hand that characterizes these peo-

ple ought not to be encouraged and promoted by this Government, and for one, I am not for doing so. It is a sufficient reason, I have no doubt, when I have stated to the House the reasons which have influenced the committee of the two Houses to change this territorial boundary, and it is a sufficient reply to all that has been said about it. . . . One grand object for establishing territorial government there now is to cover that line of travel which is pursuing its way to the Pacific ocean, affording protection to the interests that lie along that road of travel. It strikes me that the interests of the emigrants, as they go towards the Pacific ocean, are identical with those of the Territories through which they must pass, and there cannot be any antagonism between them, I think. There may be antagonism between rival routes, but between settlements lying along the same route of travel there must be sympathy and the same interest. The gentleman is mistaken about another thing, that we have established an ideal boundary—that we have passed over the natural boundary and established a mere ideal one. The boundary proposed in this bill is as good a one as can be fixed."

Immediately succeeding the remarks of Mr. Richardson, there followed a sharp parliamentary contest, during which Mr. English (of the committee of Territories) asked the consent of the house to make a minority report. After severe contention, this privilege was granted. He thereupon asked to have the proposed boundaries of Kansas Territory changed as follows: "Amend the section defining the boundary of Kansas so as to make the eastern boundary of Utah, viz., 'The summit of the Rocky mountains,' the western boundary of Kansas [illegible] Mr. English, his report (which was not strictly a minority report) was referred to the committee on Territories.

During the debate, and before the committee had brought in the bill for the erection of *two* territories, Mr. Chase, of Ohio, moved to amend the first substitute (providing for the formation of Nebraska Territory alone) by striking out of the first section all after the word "Nebraska" and inserting the following: "That all that part of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operations of this act, to-wit: Beginning at the southwest corner of the State of Missouri, thence running west on the line of thirty-six degrees thirty minutes of north latitude until it intersects the one hundred and third meridian of longitude west from Greenwich; thence north on that meridian until it intersects the thirty-eighth parallel of north latitude; thence west on said parallel of latitude to the summit

of the Rocky mountains; thence northward and along upon the summit of said Rocky mountains to the (forty-ninth parallel of latitude; thence east to the)* western boundary of the Territory of Minnesota White Earth river; thence southward on and with said boundary to the Missouri river; thence down the said river to the State of Missouri; thence south on and with the western boundary of said State to the place of beginning, be, and the same is hereby, created a temporary government by the name of the Territory of Nebraska." After a protracted and fiery debate, the yeas and nays were called for on the Chase amendment, with the following result: yeas 8, nays 34. Mr. Dodge, of Iowa, moved to amend so that the proposed boundaries would not interfere with the then present limits of Utah Territory; carried. The bill as amended went to a third reading, by yeas 29, nays 12. On the final passage of the bill in the senate, the vote stood: yets 37, nays 14, though others voted later by unanimous consent. The title decided upon was, "A bill to organize the Territories of Nebraska and Kansas."

Mr. Giddings, of Ohio, in a speech on the Kansas-Nebraska bill, said: "I lay it down that the French nation claimed title (to the province of Louisiana) solely by that rule or law among nations which gives to the government making the discovery of an important river the country drained by its waters. By that rule and by no other was Louisiana bounded. The Rocky mountains, which bounded the tributaries of the Mississippi, was the western boundary of Louisiana as understood by the French nation, as understood by the American nation, as understood by Congress, as understood by all our [illegible] to a very recent period. This is my view of the matter. I know it to have been so understood by leading men of that day. In the word of the treaty ceding Louisiana to us, there was no room for misapprehension or misunderstanding of the boundaries. It was Louisiana as held by France previous to her ceding it to Spain. It is, therefore, under the original title of France that we hold that country, bounded as it was while in her possession. Such was the title which we received, and which was held for something like sixteen years. We held the entire country drained by the southern tributaries of the Arkansas, as well as that drained by its northern tributaries. The Middle Park, to which allusion has been made at the other end of the capitol, empties its waters into the Colorado, and not into the Mississippi; and we had no more title to the Middle Park under the Louisiana Pur

* Omitted from the congressional description

chase than we had to California or Oregon. I intend to say: the dividing ridge between the Colorado and the waters of the Arkansas was the boundary of that purchase. Now, in 1819, when the negotiation of the treaty with Spain was entered into—some sixteen years subsequent to the treaty with France, by which we obtained this territory—Spain owned the whole country adjacent on the southwest, and then by the treaty with Spain, the boundary between that country and ours was defined and established without following the lines of the 'Louisiana Purchase.' In that treaty we surrendered to Spain the whole of the country watered by the southern tributaries of the Arkansas, which empty their waters into that river west of the hundredth degree of longitude. That country, which constituted a part of the Louisiana purchase, was given to Spain, and the boundary was established on the Arkansas river, instead of on the southern divide which separates its tributaries from those streams which run south. Following the Arkansas to its source, the line agreed upon runs thence due north until it strikes the forty-second degree of north latitude, thus giving to us that tract which Fremont describes as the Middle Park, whose waters empty into the Colorado. This tract had belonged to Spain until the ratification of our treaty in 1821. It constituted no part of Louisiana, and did not belong to us when the Missouri compromise was adopted; and of course could never have been subjected to that compromise, which was confined to the territory ceded to us by France. The Middle Park was held by Spain by force of the same principle which France held Louisiana by discovery—claiming the whole country w[illegible] of their streams, among which was the Colorado."* In the bill finally agreed upon in 1854, the following boundaries were given to Kansas and Nebraska:

"That all that part of the Territory of the United States included within the following limits, except such portions thereof as are hereinafter expressly exempted from the operation of this act, to-wit: Beginning at a point on the western boundary of the State of Missouri where the thirty seventh parallel of north latitude crosses the same; thence west on said parallel to the eastern boundary of New Mexico; thence north on said boundary to latitude thirty-eight; thence following said boundary westward to the east boundary of the Territory of Utah on the summit of the Rocky mountains; thence northward on said sum-

* This statement should be noted. That the United States from 1803 to 1819 possessed the Upper Arkansas country, but not the Middle Park, and after 1819 it possessed the latter but not the former.

mit to the fortieth parallel of latitude; thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning, be, and the same is hereby, created into a temporary Government by the name of the Territory of Kansas: Provided, That nothing in this act contained shall be construed to inhibit the Government of the United States from dividing said Territory into two or more Territories in such manner and at such times as Congress shall deem convenient and proper, or from attaching any portion of said territory to any other State or Territory of the United States: Provided further, That nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians; or to include any territory which by treaty with any Indian tribe is not without the consent of said tribe to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries and constitute no part of the Territory of Kansas until said tribe shall signify their assent to the President of the United States to be included within the said Territory of Kansas, or to affect the authority of the Government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to the Government to make if this act had never passed."

"That all that part of the territory of the United States included within the following limits, except such portions thereof as hereinafter expressly excepted from the operations of this act, to-wit: Beginning at a point on the Missouri river where the fortieth parallel of north latitude crosses the same; thence west on said parallel to the east boundary of the Territory of Utah on the summit of the Rocky mountains; thence on said summit northward to the forty-ninth parallel of north latitude, thence east on said parallel to the western boundary of the Territory of Minnesota; thence southward on said boundary to the Missouri river; thence down the main channel of said river to the place of beginning, be, and the same is hereby created into a temporary Government by the name of the Territory of Nebraska." The same provisions as were attached to the admission of Kansas were also attached to the admission of Nebraska.

Beginning in 1855 and continuing until 1861, the people of the Territory of Kansas made armed and continuous efforts to secure admission into the Union under various pretexts and

organizations. No change was asked in the territorial boundaries. But in the minds of congress, other obstacles were sufficient to warrant the rejection of the demands from all sources, and hence it was not until 1861, after the southern members had resigned from congress, that the state was admitted. On January 28, 1861, Mr. Grow, of Pennsylvania, said: "It is now five years almost since a bill first passed for the admission of Kansas into the Union." It was deemed an opportune time, and accordingly Kansas was given the privileges of statehood.

The people of Nebraska Territory were enabled by the act of congress approved April 19, 1864, to form a constitution and state government, the following being the wording of the congressional enactment: "That the inhabitants of that portion of the Territory of Nebraska included in the boundary hereafter designated," etc., etc. "Commencing at a point formed by the intersection of the western boundary of the State of Missouri with the fortieth degree of north latitude; extending thence due west along said fortieth degree of north latitude to a point formed by its intersection with the twenty-fifth degree of longitude west from Washington, thence north along said twenty-fifth degree of longitude to a point formed by its intersection with the forty-first degree of north latitude; thence west along said forty-first degree of north latitude to a point formed by its intersection with the twenty-seventh degree of longitude west from Washington; thence north along said twenty-seventh degree of west longitude to a point formed by its intersection with the forty-third degree of north latitude; thence east along said forty-third degree of north latitude to the Keya Paha river; thence down the middle of the channel of said river with its meanderings to its junction with the Niobrara river; thence down the middle of the channel of said Niobrara river and following the meanderings thereof to its junction with the Missouri river; thence down the middle of the channel of said Missouri river and following the meanderings thereof to the place of beginning." This act admitting Nebraska into the Union was vetoed by President Johnson, and was passed by both senate and house over his veto, but was made inoperative until certain conditions had been fulfilled. The proclamation of March 1, 1867, completed its admission into the Union.

The act of July 20, 1868, appropriated the sum of four thousand eight hundred dollars for the survey of the boundary line between Nebraska and Colorado Territories, "and that portion of the western boundary of the State of Nebraska embraced between

the forty-first and forty-third degrees of north latitude," estimated at three hundred and twenty miles.

The act of April 28, 1870, provided, "That so soon as the State of Nebraska through her Legislature has given her consent thereto, the center of the main channel of the Missouri river shall be the boundary line between the State of Nebraska and the Territory of Dakota between the following points, to-wit: Commencing at a point in the center of said main channel north of the west line of section twenty-four, in township twenty-nine north, range eight east, of the Sixth Principal meridian, and running along the same to a point west of the most northerly portion of fractional section 17, of township twenty-nine north, range nine east, of said meridian, in the State of Nebraska, as meandered and shown by the plats and surveys of said sections originally made and now on file in the general land office."

By the act of March 28, 1882, congress provided "that the northern boundary of the State of Nebraska shall be, and hereby is, subject to the provisions hereinafter contained, extended so as to include all that portion of the Territory of Dakota lying south of the forty-third parallel of north latitude and east of the Keya Paha river and west of the main channel of the Missouri river; and when the Indian title to the lands thus described shall be extinguished, the jurisdiction over such lands shall be, and hereby is, ceded to the State of Nebraska and subject to all the conditions and limitations provided in the act of Congress admitting Nebraska into the Union; and the northern boundary of the State shall be extended to said forty-third parallel as fully and effectually as if said lands had been included in the boundaries of said State at the time of its admission to the Union; reserving to the United States the original right of soil in said lands and of disposing of the same: Provided, That this act, so far as jurisdiction is concerned, shall not take effect until the President shall, by proclamation, declare that the Indian title to said lands has been extinguished, nor shall it take effect until the State of Nebraska shall have assented to the provisions of this act; and if the State of Nebraska shall not by an act of its Legislature consent to the provisions of this act within two years next after the passage hereof, this act shall cease and be of no effect."

The boundary line between the United States and California was ordered to be run by act of congress approved May 26, 1860, and the sum of fifty-five thousand dollars was appropriated to defray the necessary expense. The line was defined as follows:

"Commencing at the point of intersection of the forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line in a southeasterly direction to the river Colorado at a point where it intersects the thirty fifth degree of north latitude."

During the period of the Civil war, it was very easy for any territory having such an ambition, to become a state; or for any tract of country having a few inhabitants to become a territory. The historic struggles over the admission of states during the slave era, were not forgotten; and the North, having absolute control of both congress and the government, lost no time, after the bombardment of Fort Sumter, in providing for the erection of some half dozen territories and states. The old policy had been to permit the territory to become a suppliant for statehood—to require the citizens to call a convention, adopt a constitution, elect the necessary officers as an evidence of their preparation, fitness and desire for state government, and then pray, often amid bitter wailings for many years, for admission into the glorious Union. The long wait made the prize all the more eagerly sought for and all the more cherished after being secured. The high attainment of becoming a star on "Old Glory," was thus designed to be made worthy of prayer and humility by any state. But during the Civil war all was changed. The territories were not even asked if they had enmasse adopted constitutions and had knocked for admission. The door was opened to all without knocking. There was no telling how soon the southern senators would be back again to close the door against all states save those sanctioning the institution of slavery. It was necessary, therefore, not only to make hay while the sun shone, but also in the night. It was a proud time for the American eagle.

The inhabitants of what is now Colorado prepared eight large memorials to congress, which were read in both house and senate in February, 1860, praying that they might have a territorial government, and asked that the territory proposed should have the following boundaries: "Commencing at a point where the thirty-seventh degree of north latitude crosses the one hundred and second degree of west longitude, and running north on said meridian to the forty third degree of north latitude, thence west on said parallel to the one hundred and tenth degree of west longitude; thence south on said meridian to the thirty-seventh degree of north latitude, thence east on said parallel to the place

of beginning." No name for the proposed territory was mentioned in the memorials.

On April 3, 1860, Mr. Green, from the committee on Territories, introduced in the United States senate a bill for the formation of the Territory of Idaho, but a little later the name was changed to Colorado. It came up again the next session, and proposed taking off of the Territory of Utah a small tract and attaching it to the new territory, but this change was not agreed to. All of New Mexico above the thirty-seventh parallel, called the "notch," was attached to Colorado Territory. During the discussion, Senator Douglas, of Illinois, said: "In the first place, I object to the boundary named in the bill. This boundary cuts off a large portion of New Mexico and annexes it to the new Territory of Colorado. The portion thus cut off is New Mexico territory and formerly belonged to the Republic of Mexico. The land titles are derived from that Government: the inhabitants are mostly Mexicans; they are governed by Mexican laws and usages. I see no reason why they should be separated. . . . By the laws of New Mexico, that is slave territory. This is detaching that portion of slave territory, . . . and attaching it to the new Territory of Colorado. . . . The substitute which I have prepared makes the territorial boundary conform to the existing boundary." Mr. Green, of Missouri, in answering, said: "On the subject of the proposed southern boundary of this Territory, cutting off a portion of New Mexico, I must be permitted to make this remark: That I thought it ought not to be cut off; but at the same time I was compelled to say that I thought so simply from my desire to please the delegate from that Territory, and that the proper division of the Territory required it to be cut off. It does not cut off five inhabitants, according to my opinion, and not a single nigger." (Laughter.)

The boundaries prescribed for the Territory of Colorado, as set forth in the act of congress approved February 28, 1861, were as follows: "Commencing on the thirty-seventh parallel of north latitude where the twenty-fifth meridian of longitude west from Washington crosses the same; thence north on said meridian to the forty-first parallel of north latitude; thence along said parallel west to the thirty-second meridian of longitude west from Washington; thence south on said meridian to the north line of New Mexico; thence along the thirty-seventh parallel of north latitude to the place of beginning." It was stipulated that the Indian lands within these boundaries should be exempted from the control of the Territory; that the government reserved

the right to change the boundaries of the Territory should such proceeding be necessary for future purposes.

The inhabitants of Colorado, by act of March 21, 1864, were enabled to form a constitution and state government preparatory for admission into the Union, and given the following territorial limits: "Commencing at a point formed by the intersection of the thirty-seventh degree of north latitude with the twenty fifth degree of longitude west from Washington; extending thence due west along said thirty-seventh degree of north latitude to a point formed by its intersection with the thirty-second degree of longitude west from Washington, thence due north along said thirty-second degree of north latitude to a point formed by its intersection with the forty-first degree of north latitude; thence due east along said forty-first degree of north latitude to a point formed by its intersection with the twenty fifth degree of longitude west from Washington; thence due south along said twenty-fifth degree of west longitude" to the place of beginning. Notwithstanding that the boundaries of the state were made precisely the same as those of the territory, the following language was used in the act of March 21, 1864: "That the inhabitants of *that portion of* the Territory of Colorado included in the boundaries hereinafter designated, be, and they are hereby, authorized to form for themselves out of said Territory, a State government, with the name aforesaid." This language would seem to signify that a portion of the territory was left outside of the state limits; but such was not the fact. But the inhabitants did not take advantage of this permission to form a state government, for reasons beyond the province of this chapter.

The act of March 3, 1875, enabled the people of the Territory of Colorado to form a constitution and state government and to be admitted to the Union. The boundaries were established as follows: "Commencing on the thirty-seventh parallel of north latitude where the twenty-fifth meridian of longitude west from Washington crosses the same; thence north on said meridian to the forty-first parallel of north latitude; thence along said parallel west to the thirty-second meridian of longitude west from Washington; thence south on said meridian to the thirty-seventh parallel of north latitude; thence along said thirty seventh parallel of north latitude to the place of beginning."

The act of March 2, 1861, created Dakota Territory with bounds as follows: "That all that part of the territory of the United States included within the following limits, namely: Commencing at a point in the main channel of the Red River of the North where the forty-ninth degree of north latitude crosses

the same; thence up the main channel of the same and along the boundary of the State of Minnesota to Big Stone Lake; thence along the boundary line of the said State of Minnesota to the Iowa line; thence along the boundary line of the State of Iowa to the point of intersection between the Big Sioux and Missouri rivers; thence up the Missouri river and along the boundary line of the Territory of Nebraska to the mouth of the Niobrara or Running water river; thence following up the same in the middle of the main channel thereof to the mouth of the Keha Paha or Turtle Hill river; thence up said river to the forty-third parallel of north latitude; thence due west to the present boundary of the Territory of Washington; thence along the boundary line of Washington Territory to the forty-ninth degree of north latitude; thence east along said forty-ninth degree of north latitude to the place of beginning, be, and the same is hereby, organized into a temporary government by the name of the Territory of Dakota." In the same act was the following change: "That the river in said Territory (Dakota) heretofore known as the River aux Jacques or James river shall hereafter be called the Dakota river." The Indian lands within the boundaries of the territory were excluded from the operations of the act; and the government reserved the right to subdivide the territory or attach portions of it to other territories. It was also provided in the same act "That until Congress shall otherwise direct, that portion of the Territories of Utah and Washington between the forty-first and the forty-third degree of north latitude and east of the thirty-third meridian of longitude west from Washington shall be and is hereby incorporated into and made a part of the Territory of Nebraska." Dakota Territory thus formed embraced all of the present North and South Dakotas, and portions of Wyoming and Montana.

The act of May 26, 1864, made the provision "That until Congress shall otherwise direct, all that part of the Territory of Idaho included within the following boundaries, towit: Commencing at a point formed by the intersection of the thirty-third degree of longitude west from Washington with the forty-first degree of north latitude; thence along said thirty-third degree of longitude to the crest of the Rocky mountains; thence northward along the said crest of the Rocky mountains to its intersection with the forty-fourth degree and thirty minutes of north latitude; thence westward along said forty fourth degree and thirty minutes north latitude to the thirty-fourth degree of longitude west from Washington; thence northward along said thirty-fourth degree of longitude to its intersection with the forty-fifth degree of north

latitude; thence eastward along said forty-fifth degree of north latitude to its intersection with the twenty-seventh degree of longitude west from Washington; thence south along said twenty-seventh degree of longitude west from Washington to the forty-first degree of north latitude; thence west along said forty first degree of north latitude to the place of beginning, shall be and is hereby incorporated temporarily into and made part of the Territory of Dakota." The tract thus attached to the Territory of Dakota embraced nearly all of the present State of Wyoming.

An act of February 17, 1873, provided "That all that portion of Dakota Territory lying west of the one hundred and eleventh meridian of longitude, which, by an erroneous definition of the boundaries of said Territory by a former act of Congress, remains detached and distant from Dakota proper some two hundred miles, be, and the same is hereby, attached to the adjoining Territory of Montana." Congress was under the impression that a mistake had been made, but all of the territory was found to have been accounted for, and hence the act was inoperative.

As early as 1871 the legislature of Dakota Territory passed a resolution praying for a division of the territorial limits. This was repeated in 1872, 1874 and 1877. It protested in 1879 against a certain division. In February, 1872, the committee on territories reported favorably a bill for the erection of Pembina Territory north of the forty-sixth parallel of latitude. They made the same recommendation in 1874. In 1878 it was proposed in the senate to form a territory with the following limits: From the forty-third to the forty-ninth degrees of north latitude and from the twenty-third to the twenty-eighth degrees of longitude west from Washington. This tract embraced the eastern parts of Wyoming and Montana and the western parts of the two Dakotas, with the Black Hills country as the center. In 1881 the senate committee reported favorably on the formation of Pembina Territory on the north and Dakota Territory on the south. Early in the eighties a majority report of the committee was favorable for the formation of one state of all of the two Dakotas, but the minority reported adversely. At this time also the project of naming the northern portion "Lincoln Territory" was set afoot. A little later the plan which finally triumphed—that of forming two governments of the territory, and calling the northern portion North Dakota and the southern South Dakota—was projected. In 1885 a bill for the erection of a territory from all of the Dakotas west of the Missouri river was introduced in congress. In 1885 Mr. Springer, of Illinois, introduced a bill enabling the Territories of Dakota, Montana, Washington and

New Mexico to form state governments. In the early memorials and bills the dividing line was usually placed on the forty-sixth parallel, but later, the petitioners asked to have it located on the seventh standard parallel, which was situated about five miles to the southward of the forty-sixth parallel. The reason given for the retention of the Indian term "Dakota" for the two divisions was because all the inhabitants had become attached to the name and desired the two divisions to be named North Dakota and South Dakota. In 1881 the legislature of Dakota Territory adopted a memorial, praying for a division of the territory into three sections, each to be given a separate government. It passed the house by one majority and the council by six majority. It seemed to be the determination of the inhabitants of Dakota Territory either to form two states out of its territory or to retain its territorial form of government. There was no question as to limits, except as to whether the forty-sixth parallel of north latitude or the seventh standard parallel should be the dividing line. The latter was finally decided upon, because the surveys had been based on that line. The statehood question was again agitated in 1885-7, but without definite result.

On the 22d of February, 1889, congress passed an act for the division of Dakota Territory into two states and for enabling the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted to the Union on an equal footing with the other states. Dakota Territory was divided as follows: "The area comprising the Territory of Dakota shall, for the purposes of this act, be divided on the line of the seventh standard parallel produced due west to the western boundary of said Territory."

By proclamation of President Harrison November 8, 1889, Montana Territory, having complied with all the usual conditions and requirements, was declared to be one of the states of the Union. On November 2, 1889, both North and South Dakota were proclaimed to be states. No change was made in the boundaries of Dakota Territory in the formation of the two states. The territory was merely divided on the seventh standard parallel of latitude. The State of Montana was given the same boundaries as the Territory of Montana. By act of September 25, 1890, the sum of twenty-five thousand dollars was appropriated to defray the expense of making the survey of the line between North and South Dakota. The act of August 5, 1892, appropriated twenty thousand dollars to survey and mark the boundary line between the States of Nebraska and South Dakota west of the Missouri river. In 1894 the sum of five hundred dollars was appropriated

for retracing part of the boundary between the States of Louisiana and Arkansas and the State of Texas. The act of April 23, 1897, appropriated the sum of seven thousand six hundred and fifty dollars for the survey of certain portions of the boundary line between Montana and Idaho. By act of July 24, 1897, congress consented to the compact between South Dakota and Nebraska, whereby the boundary line between those two states was slightly changed. This was opposite Dixon county, Neb., and Clay county, S. D. "For the resurvey and reestablishment on the line of the thirty-seventh parallel of north latitude of the boundary line between the State of Colorado and the Territories of New Mexico and Oklahoma, which is coincident with said parallel between the twenty-fifth and thirty-second degrees of west longitude from Washington," a calculated distance of three hundred eighty-seven and one-eighth miles, the sum of thirty-one thousand five hundred dollars was appropriated by act of July 1, 1902.

On January 15, 1864, Mr. Ramsey, of Minnesota, introduced a bill for a change of boundary between Wisconsin and Minnesota, but the committee reported adversely on the project. In 1870 Senator Howard, of Michigan, introduced a bill for the division of the State of Texas and the formation therefrom of three states to be named Texas, Jefferson and Matagorda. In 1878 a bill was introduced to attach the Black Hills country of Dakota to Wyoming. In 1886 a bill provided for the annexation of a part of Idaho to Montana.

The Territory of Idaho was created by act of March 3, 1863, with the following limits: "Beginning at a point in the middle channel of the Snake river where the northern boundary of Oregon intersects the same; thence following said channel of Snake river to a point opposite the mouth of the Kooskooskia or Clear Water river; thence due north to the forty-ninth parallel of north latitude; thence east along said parallel to the twenty-seventh degree of longitude west of Washington; thence south along said degree of longitude to the northern boundary of Colorado Territory; thence west along said boundary to the thirty-third degree of longitude west of Washington; thence north along said degree to the forty-second parallel of latitude; thence west along said parallel to the eastern boundary of the State of Oregon; thence north along said boundary to the place of beginning." It was thus made to embrace all of the present Idaho, all of Montana, and all of Wyoming except the southwest corner. It was restricted to its present boundaries when Montana and Wyoming were erected.

By the act of July 3, 1890, the eastern boundary of Idaho Territory was established as follows: "Beginning at the intersection of the thirty-ninth meridian with the boundary line between the United States and the British possessions; then following said meridian south until it reaches the summit of the Bitter Root mountains; thence southeastward along the crest of the Bitter Root mountain range and the continental divide until it intersects the meridian of thirty-four degrees of longitude; thence southward on this meridian to the forty-second parallel of latitude; thence west on this parallel of latitude to its intersection with a meridian drawn through the mouth of the Owyhee river; thence down the mid-channel of the Snake river to the mouth of the Clear Water river; and thence north on the meridian which passes through the mouth of the Clear Water to the boundary line between the United States and the British possessions, and east on said boundary line to the place of beginning." This gave it the boundaries it has since possessed.

Congress by act of May 26, 1864, provided a temporary government for a new territory having the following limits: "That all that part of the territory of the United States included within the limits, to-wit: Commencing at a point formed by the intersection of the twenty-seventh degree of longitude west from Washington with the forty-fifth degree of north latitude; thence due west on said forty-fifth degree of latitude to a point formed by its intersection with the thirty-fourth degree of longitude west from Washington; thence due south along said thirty-fourth degree of longitude to its intersection with the forty-fourth degree thirty minutes of north latitude; thence due west along said forty-fourth degree and thirty minutes of north latitude to a point formed by its intersection with the crest of the Rocky mountains; thence following the crest of the Rocky mountains northward till its intersection with the Bitter Root mountains; thence northward along the crest of said Bitter Root mountains to its intersection with the thirty-ninth degree of longitude west from Washington; thence along said thirty-ninth degree of west longitude northward to the boundary line of the British possessions; thence eastward along said boundary line to the twenty-seventh degree of longitude west from Washington; thence southward along said twenty-seventh degree of longitude to the place of beginning, be, and the same is hereby, created into a temporary government by the name of the Territory of Montana." The Indians within these limits were excluded from territorial management; and the right to change the boundaries, or to attach portions to other territories,

was reserved by the government. This was the same as its present boundaries.

In June, 1868, a bill for the formation of the Territory of Wyoming was introduced in the United States senate. The name of this territory was at first "Lincoln," but after long discussion, and without disparagement to the "Great Emancipator," it was finally determined to cling to the custom of naming the states with some Indian designation. The name "Wyoming" came directly from a town of that name in Pennsylvania, and indirectly from the Indians. During the consideration of this bill, Mr. Yates, of Illinois, said, "Dakota Territory which comprises almost all the proposed Territory of Lincoln (Wyoming), is composed of two immense areas almost distinct from each other; more distinct than the territories of Wisconsin and Illinois, or Missouri and Iowa, for the latter states join each other contiguously in their whole breadth, while the two divisions of Dakota only touch each other for about one quarter of the extent of the Territory, north and south, for only about two degrees on the one hundred and fourth meridian of west longitude. The eastern division is nearly four hundred miles square, extending from latitude forty three degrees north to latitude forty-nine degrees north, and from longitude ninety-six and some minutes west to longitude one hundred and four west. In this area and near the eastern boundary is Yankton, the capital of the territory. The other area extends from latitude forty-one degrees north to latitude forty-five degrees north, and from longitude one hundred and four degrees west to longitude one hundred and eleven degrees west, being three hundred and fifty miles long and three hundred wide, and out of the latter area it is proposed to constitute the Territory of Lincoln." He stated that the bill detached a small portion of the Territory of Utah, and attached it to the proposed Territory of Wyoming, upon the tract being Fort Bridger. It also took a strip from Idaho and attached it to Wyoming Territory.

The boundaries defined in the Wyoming bill saw many changes. The territory had to be cut wholly from surrounding territories, and various objections were introduced. The language in the original bill was as follows: "That the territory now known as Dakota lying west of the one hundred and fourth degree of west longitude, be, and the same is hereby, organized into a temporary government by the name of the Territory of Wyoming." It was moved to amend this boundary by striking out this language and inserting the following: "That the territory of the United States described as follows: Commencing at the intersection of the twenty-seventh meridian of west longitude from Washington

with the forty-fifth degree of north latitude, and running thence west to the thirty fourth meridian of west longitude, thence south to the forty-first degree of north latitude, thence east to the twenty-seventh meridian of west longitude, and thence north to the place of beginning, be and the same is hereby, organized into a temporary government by the name of the Territory of Wyoming."

Provision for a territorial government was definitely made for the Territory of Wyoming by act of congress approved July 25, 1868, the following being the boundaries: "That all that part of the United States described as follows: Commencing at the intersection of the twenty seventh meridian of longitude west from Washington with the forty-fifth degree of north latitude and running thence west to the thirty fourth meridian of west longitude; thence south to the forty-first degree of north latitude; thence east to the twenty-seventh meridian of west longitude; and thence north to the place of beginning, be, and the same is hereby, organized into a temporary government by the name of the Territory of Wyoming." The government reserved the usual rights to manage the Indians, and to divide the territory or attach portions of it to other territories. The Territory of Wyoming was carved out of the limits of Dakota Territory, and the laws of the latter were to remain in force until repealed by those of the new territory. The enabling act was to be in full force and effect from and after the time when the necessary officers should be appointed and be duly qualified. The boundaries have since been the same, except slight changes at the reservations.

The act of July 10, 1890, provided for the admission of the State of Wyoming into the Union, and gave it the following boundaries: "That the said state shall consist of all the territory included within the following boundaries, towit: Commencing at the intersection of the twenty-seventh meridian of longitude west from Washington with the forty-fifth degree of north latitude, and running thence west to the thirty-fourth meridian of west longitude; thence south to the forty-first degree of north latitude; thence east to the twenty-seventh meridian of west longitude; and thence north to the place of beginning: Provided, That nothing in this act contained shall repeal or affect any act of Congress relating to the Yellowstone National Park, or the reservation of the Park as now defined, or as may be hereafter defined or extended, or the power of the United States over it."

By the act of March 19, 1872, the president was authorized to cooperate with Great Britain in the appointment of a joint commission for determining the boundary line between the United States and the British possessions between the Lake of the Woods

and the Rocky mountains in accordance with the plans prepared by Gen. A. A. Humphreys, chief of government engineers. The sum of fifty thousand dollars was appropriated to meet this expense. The act of March 3, 1873, appropriated thirteen thousand eight hundred fifty dollars for the survey of the western boundary of the Territory of Wyoming, estimated a distance of two hundred seventy-seven miles; and the sum of two thousand four hundred dollars for the survey of the southern boundary of Colorado between the twenty-fifth and the twenty-sixth meridians, estimated sixty miles in length. The act of June 10, 1872, appropriated the sum of twenty-two thousand two hundred dollars for the survey of the southern boundary of Wyoming, an estimated distance of three hundred seventy miles; also appropriated eight thousand four hundred dollars for the survey of the two hundred ten miles of the western boundary of Kansas; also the sum of eight thousand eight hundred dollars for the survey of the northern boundary of Nebraska, a distance of about two hundred twenty miles; also the sum of ninety-eight thousand dollars to complete the survey of the boundary of the Indian country between the ninety-sixth and the ninety-eighth meridians of west longitude, i. e., west from Greenwich. For the survey of the boundary between the United States and the British possessions from the Lake of the Woods to the Rocky mountains pursuant to the act of March 19, 1872, there was appropriated by the act of June 11, 1874, the sum of one hundred fifty thousand dollars to be immediately available from and after the passage of the act.

There was appropriated by congress in 1877 the sum of seven thousand dollars for the survey of the eastern boundary of Wyoming, an estimated distance of one hundred and thirty-nine miles; for retracting the boundary line between Arkansas and Indian Territory, estimated one hundred and ninety miles, the sum of nine thousand nine hundred dollars. Of the fifty thousand dollars appropriated for the survey of the international line from the Lake of the Woods to the Rocky mountains, there was an unexpended balance of fifteen thousand nine hundred ninety-two dollars and thirty-six cents. Colorado was proclaimed a state by President Grant on August 1, 1876, and has since been called the "Centennial State." For the survey and marking of the boundary line between Colorado and Utah Territory, congress appropriated in 1878 the sum of fifteen thousand dollars; and the following year appropriated twenty thousand dollars for the survey of the northern boundary of Wyoming, being the forty-fifth parallel of latitude between the twenty-seventh and the thirty-

fourth meridians of west longitude. A convention to relocate the boundary between Mexico and the United States west of the Rio Grande was concluded July 29, 1882. This line had been established by the treaties of February 2, 1848, and December 30, 1853. To complete the survey of the boundary between the territories of Dakota and Montana, an estimated distance of two hundred and eighty miles, there was appropriated in 1885 the sum of eight thousand four hundred dollars; and on the same date for remarking the boundary between the State of Colorado and Utah Territory, a distance of about two hundred ten miles, the sum of six thousand three hundred dollars. A convention touching the international boundary line between the United States and Mexico where it follows the bed of the Rio Grande and the Rio Colorado, was concluded at Washington November 12, 1884, and proclaimed September 14, 1886.

The people of Oklahoma, by the act of May 2, 1890, were authorized to form a temporary government to be called the Territory of Oklahoma and were given the following boundaries: "That all that portion of the United States now known as the Indian territory, except so much of the same as is actually occupied by the five civilized tribes, and the Indian tribes within the Quapaw Indian Agency, and except the unoccupied part of the Cherokee Outlet, together with that portion of the United States known as the Public Land Strip, is hereby erected into a temporary government by the name of the Territory of Oklahoma. The portion of the Indian territory included in said Territory of Oklahoma is bounded by a line drawn as follows: Commencing at a point where the ninety-eighth meridian crosses the Red river; thence by said meridian to the point where it crosses the Canadian river; thence along said river to the west line of the Seminole country; thence along said line to the north fork of the Canadian river; thence down said river to the west line of the Creek country; thence along said line to the northwest corner of the Creek country; thence along the north line of the Creek country to the ninety-sixth meridian; thence northward by said meridian to the southern boundary line of Kansas; thence west along said line to the Arkansas river; thence down said river to the north line of the land occupied by the Ponca tribe of Indians, from which point the line runs so as to include all the lands occupied by the Ponca, Tonkawa, Otoe and Missouri, and the Pawnee tribes of Indians, until it strikes the south line of the Cherokee Outlet, which it follows westward to the east line of the State of Texas; thence by the boundary line of the State of Texas to the point of

beginning; the Public Land Strip, which is included in the said Territory of Oklahoma, is bounded east by the one hundredth meridian, south by Texas, west by New Mexico and north by Colorado and Kansas. Whenever the interests of the Cherokee Indians in the land known as the Cherokee Outlet shall have been extinguished and the President shall make proclamation thereof, said outlet shall thereupon and without further legislation, become a part of the Territory of Oklahoma. Any other lands within the Indian territory not embraced within these boundaries shall hereafter become a part of the Territory of Oklahoma, whenever the Indian nation or tribe owning such lands shall signify to the United States in legal manner its assent that such lands shall so become a part of said Territory of Oklahoma, and the President shall thereupon make proclamation to that effect. Congress may at any time hereafter change the boundaries of said territory, or attach any portion of the same to any other state or territory of the United States without the consent of the inhabitants of the Territory hereby created." The Indians within the boundaries of Oklahoma Territory were to remain under the control and protection of the government. For judicial purposes, such part of the Cherokee Outlet as was not thus embraced within the Territory of Oklahoma was attached to the latter. In the creative act, it was further said, "That inasmuch as there is a controversy between the United States and the States of Texas as to the ownership of what is known as Greer county, it is hereby expressly provided that this act shall not be construed to apply to said Greer county until the title to the same has been adjudicated and determined to be in the United States;" and the attorney general was authorized to commence and prosecute a suit against the State of Texas for "the tract of land lying between the North Fork and South Fork of the Red river where the Indian territory and the State of Texas adjoin, east of the one hundredth degree of longitude, and claimed by the State of Texas as within its boundary and a part of its land and designated on its map as Greer county."* It will be observed that the public land strip was thus made a part of the Territory of Oklahoma, but the Cherokee Outlet was not thus disposed of yet.

The project of forming an exclusive Indian territory seems first to have been thought of soon after the transfer of the tribes to the country set apart for them west of the Mississippi river, or about that time. Mr. Barbour, secretary of war, recommended

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* See elsewhere in this chapter for an account of the settlement of this contention.

as early as 1826 the information of a territorial government over the Indian country in the west, and the committee of Indian affairs reported a bill to that effect, but the project advanced no farther at that time. In 1829, Mr. Eaton, secretary of war, said, "I beg leave to suggest for your consideration if an Indian Territory, without the range of western States or Territories, might not be advantageously created." In 1834 the committee of Indian affairs reported a bill for the formation of such a territory, and congress accordingly created and defined Western territory (see elsewhere). The committee even went so far as to ask that should such a territory be formed, it would be well to admit it as a state "when their advancement in civilization would warrant." In 1836 another bill, giving boundaries coincident with the present territory and Oklahoma and Kansas was introduced in congress. During the twenty-seventh congress, Mr. Spencer, secretary of war, said "The plan of something like a territorial government for the Indians has been suggested. The object is worthy of the most deliberate consideration of all who take an interest in the fate of this helpless race." In 1845-6 the American Mission association recommended the formation of such an independent Indian territory, and in response the congressional committee reported a bill defining the boundaries of the Indian territory about as above stated, but this project failed. During all this time the principal argument against the erection of an independent territory, was because the United States was bound not to do so by the stipulations contained in the various treaties with the Indians; which statement was founded on absolute fact. Several of the Indian nations, particularly the Choctaws, had made great advancement in the arts of civilization; but in all cases they protested against the erection of an independent Indian territory. The bill reported in 1845-6 defined the following boundaries: "Bounded on the east by Arkansas and Missouri as far north as the south bank of the Missouri river; on the northeast by the south bank of the said Missouri river to the mouth of the river Platte; on the north by the south bank of the said river Platte to where its north branch crosses the forty-second degree of north latitude nearest to the twenty-eighth degree of longitude west from Washington; and by a line upon said latitude to the Mexican possessions; and bounded west and south by the said Mexican possessions, shall constitute a territory to be called the Indian Territory."

The same boundaries were defined in a bill introduced in 1848. After this the subject seems to have slept until 1871, when a bill was again introduced in the senate, for the formation of Indian

Territory. The boundaries were made to embrace about all of the present territories of the Indians and Oklahoma. When the subject came up again in 1875 the Cherokee Indians entered a most vigorous protest, as did also the Osages and other tribes interested. At this time a bill was pending in the house for the erection of a territory out of the whole of the then Indian country, to be called Oklahoma. It was argued in congress that because many of the Indians had fought against the government during the rebellion, the tribes in Indian Territory had forfeited their rights to remain in their own tribal state, as had been guaranteed in previous treaties, and that, therefore, the territory should be placed within a government under the jurisdiction of the United States. The report of the congressional committee reads "All were declared to have forfeited the protection of the Government their right to their soil and of self government. One of the conditions offered them and insisted upon was a provision authorizing the establishment of a territorial form of government by Congress over them. This proposition was strenuously resisted by the delegations of the Cherokees, Choctaws, Creeks, Chickasaws and Seminoles then in Washington City. So earnest were the commissioners on the part of the United States to force this provision upon them that the then commissioner of Indian Affairs did not hesitate to arrogate to himself the unprecedented authority to depose John Ross, who was and had been for nearly forty years chief of the Cherokee Nation, and who had furnished more men for the Union army according to population than any State in the Union."* The committee recommended, for these and other reasons, that the bill be rejected. In 1877 another bill of similar import for the formation of Oklahoma Territory was considered by congress. The proposed territory was bounded north by Kansas and Colorado, south by Texas, east by Missouri and Arkansas, and west by Texas and New Mexico Territory. In 1879 a similar bill was again considered. In 1886 the same bill was made to embrace all of the present Oklahoma, Indian Territory and the public land strip, but the Indians were specially excepted from the operations of the act. At all times the Indians protested vigorously against being included in the territorial government proposed. In 1888 the plan was changed. It was proposed that the Territory of Oklahoma should embrace all of the country west of the five abovementioned civilized tribes, to include the public land strip, but not to include Greer county. On the public land strip were

*Reports of Committees, Second session, Forty-third Congress.

many settlers, who had without authority taken farms there and had named the country the "Territory of Cimarron."

As early as 1890 the project of admitting Oklahoma to statehood was considered by congress. The boundaries have since been variously defined. A large following demanded the eastward extension of the proposed state so as to embrace all of Indian Territory. This was strenuously resisted by the Indians themselves and generally by the congress and the sentiment of the people, who desired that the United States should keep its time-honored faith with the redmen. The question is now pending in congress.

In the same act which created the Territory of Oklahoma (May 2, 1890) Indian Territory was formed with the following boundaries: "That all that part of the United States which is bounded on the north by the State of Kansas, on the east by the States of Arkansas and Missouri, on the south by the State of Texas, and on the west and north by the Territory of Oklahoma (as defined in the first section of this act), shall, for the purposes of this act, be known as Indian Territory." The tract of country occupied by the Indians, and known as Indian Territory, had no independent government, temporary or otherwise, prior to this enactment. It was spoken of as Indian Territory with a capital T even in the public documents, which would signify that it had been granted a temporary government, but such was not the fact until the passage of the above act. In referring to it as "Indian territory," nothing more was meant than that it was territory or a tract of country owned or occupied by the Indians. This statement is also true concerning all of the territory west of the Mississippi and north of Missouri after 1821 and prior to 1834. Even Western Territory, created in 1834, was a general term signifying western Indian lands. The western country was often called Missouri Territory with a big T, but had no organization as such. It was not even attached to any of the organized territories or states during that period except for certain judicial proceedings. As it had very few settlers and as it was mostly occupied by the Indian tribes, from whom the territory had not yet been purchased, it was left to shift for itself usually under a native governor and under Indian laws. At first the policy of the government was to take no action concerning the territory until the Indian title thereto had been extinguished. Later, the policy prevailed to embrace all the tribes within the bounds of new territories, but to exclude them from the operations of the territorial government. In the case of Indian Territory, the

natives themselves were conceded their own government, as above shown.

The Cherokee tribe of Indians, having signified their assent to the sale of the Cherokee Outlet, an agreement to that effect was reached December 19, 1891, by which the sum of two hundred and ninety-five thousand seven hundred and thirty-six dollars was appropriated for immediate use, and the secretary of the interior was authorized to contract to pay eight million three hundred thousand dollars in addition, or so much of the same as was necessary for the following tract of country known as the "Cherokee Outlet:" "Bounded on the west by the one hundredth degree of west longitude; on the north by the State of Kansas; on the east by the ninety-sixth degree of west longitude, and on the south by the Creek nation, the Territory of Oklahoma and the Cheyenne and Arapahoe Reservation, created or defined by Executive order dated August 10, 1869." It was provided that the proclamation of the president should open this tract to settlement. Though persistently urged by many advocates, recent attempts by congress to form either two states of Oklahoma and Indian Territories with their present boundaries, or one state of both with the outer boundaries of each have failed.

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